

IN THE UNDERCOVER POLICING INQUIRY

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CAT H CORE PARTICIPANTS  
WRITTEN CLOSING: TRANCHE 1  
FEBRUARY 2023

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## I: INTRODUCTION

1. These are the written closing submissions on behalf of all Category H core participants (Cat H CPs) for Tranche 1 (T1) of the Undercover Police Inquiry (UCPI). The Cat H CPs are 25 women who were deceived into intimate sexual relationships with undercover police officers (UCOs), a child of one of those relationships, and a man who was deceived into a close long-term friendship. In Tranche 1 a total of at least 11 women<sup>1</sup> are known to have been deceived into sexual relationships, 8 of those with two UCOs, Richard Clark and Vincent Harvey, but only two women have been located. The others are deceased or have not been identified or contacted by the Inquiry.
2. After a series of escalating revelations about the misconduct of UCOs in newspapers and court cases, the UCPI was set up in 2015 to *'inquire into and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968'*<sup>2</sup>. The UCPI has concentrated primarily on the conduct of the Special Demonstration Squad (SDS-operational between 1968-2008), and the National Public Order Intelligence Unit (NPOIU- which existed from 1999-2010)<sup>3</sup>. The SDS was a unit within the Metropolitan Police Service's (MPS) Special Branch. The NPOIU was a national unit accountable to the Association of Chief Police Officers (ACPO).
3. T1 examines the conduct of the SDS between 1968- 1982.
4. In their Opening Statements at the start of the Inquiry<sup>4</sup> the Cat H CPs summarised their experiences and the devastating impact on them of the actions of the UCOs (see §26-254 Birnbergs Cat H O/S, §25-64 Bindmans Cat H O/S)<sup>5</sup>. In their Opening Statement for Phase 2<sup>6</sup> they identified the emerging evidence about UCOs engaging in sexual relationships with members of the public in the T1 period (see §16-30 Cat H

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<sup>1</sup>HN297 Richard Clark, 4 women; HN354 Vincent Harvey, 4 women; HN21, 1 woman (possibly two); HN302, 1 woman; HN126 "Paul Gray", 1 woman; unconfirmed; HN106 "Barry Tompkins", 2 women; HN300 "Jim Pickford", one woman, HN155 "Phil Cooper" 'dalliances'- retracted.

<sup>2</sup> Inquiry Terms of Reference (ToR)

<sup>3</sup> CII's Opening Statement §1, 28.10.20.

<sup>4</sup> Opening Statement on Behalf of Category H CPs [https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201026-Opening\\_Statement-CAT\\_H\\_Birnbergs-PKQC-AMENDED\\_09.11.20.pdf](https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201026-Opening_Statement-CAT_H_Birnbergs-PKQC-AMENDED_09.11.20.pdf);

<sup>5</sup> Opening Statement on behalf of Category H CPs [https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201023-Opening\\_Statement-Bindmans\\_Cat\\_H\\_CP-HWQC.pdf](https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201023-Opening_Statement-Bindmans_Cat_H_CP-HWQC.pdf)

<sup>6</sup> Opening Statement on behalf of Category H CPs for Tranche 1 Phase 2 [https://www.ucpi.org.uk/wp-content/uploads/2021/04/20210414\\_Opening-Statement-Category-H.pdf](https://www.ucpi.org.uk/wp-content/uploads/2021/04/20210414_Opening-Statement-Category-H.pdf)

O/S P2), and highlighted written and oral evidence of the institutionally sexist culture of the SDS (see §31-§48 Cat H O/S P2). In their Opening Statement for P3<sup>7</sup> (**P3 O/S**), and accompanying Legal Framework the Cat H CPs examined the evidence about the activities of the SDS, including the invasion of homes and private lives, within the applicable legal framework.

5. In this Written Closing Statement ("**Closing**") the Cat H CPs continue to rely on their earlier O/S without repeating them. In particular, the Cat H CPs adopt in full, as part of this Closing, their submissions on the unlawfulness of and lack of justification for the SDS' operations in their P3 O/S and Legal Framework<sup>8</sup>. They note that both the content and the relevance of the Legal Framework is largely agreed in CTI's own '*Submissions on section 2 of the Inquiries Act 2005 and the applicable legal framework*' (see §78-80)<sup>9</sup>, and that neither the MPS nor the Designated Lawyers have submitted any document responding to the Cat H submissions on the law, despite being invited by the Chair to do so<sup>10</sup>.
  
6. This Closing builds on the P3 O/S, and performs three key tasks foreshadowed in that O/S.
  - (1) It addresses the final state of the evidence about the SDS's activities, and the knowledge and responsibility of senior officers, ministers and government officials for those activities, in the T1 period, focusing primarily on matters relevant to the Cat H CPs.
  - (2) It explores the questions posed at §28 P3 O/S<sup>11</sup>, namely, how and why the SDS's serious breaches of key legal principles underpinning British democracy and multiple invasions of fundamental rights (see P3 O/S §23-27) were allowed to occur, approved by senior police officers and ministers who must have known that the SDS's practices conflicted with long-standing law and practice concerning the

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<sup>7</sup> Opening Statement on behalf of Category H CPs for Tranche 1 Phase 3 [https://www.ucpi.org.uk/wp-content/uploads/2022/05/20220504-T1P3-Cat\\_H\\_CPs-Opening\\_Statement.pdf](https://www.ucpi.org.uk/wp-content/uploads/2022/05/20220504-T1P3-Cat_H_CPs-Opening_Statement.pdf)

<sup>8</sup> These Legal Submissions are attached to this Written Closing.

<sup>9</sup> Counsel to the Inquiry's submissions on section 2 Inquiries Act 2005 and the Relevant Legal Framework applicable to Undercover Policing in the Tranche 1 Era [https://www.ucpi.org.uk/wp-content/uploads/2022/09/20220929-cti-submissions-section\\_2\\_inquiries\\_act\\_2005.pdf](https://www.ucpi.org.uk/wp-content/uploads/2022/09/20220929-cti-submissions-section_2_inquiries_act_2005.pdf)

<sup>10</sup> During their Oral P3 Openings on 9 May 2022. DL's Counsel Mr Sanders KC expressed only a provisional position. T1P3 {Day1/167:16-25}.

<sup>11</sup> This exploration is necessarily preliminary because the questions relate to the entire Inquiry, not just T1, and the Closing is for an Interim Report.

interactions of the police with private citizens, private homes and private communications.

(3) It sets out the Conclusions the Cat H CPs draw on the law and evidence.

7. In order to perform all of these tasks this Closing also examines the wider policing context, and in particular the role of police culture in the SDS's activities. The Cat H CPs submit that an appreciation of contemporaneous attitudes, standards and practices in the MPS is necessary to put the written and oral evidence of MPS officers in T1 in its proper context. This is particularly important given that the evidence relates to events forty years ago, and many potential witnesses are deceased.
8. These contemporaneous attitudes, standards and practices are evidenced in a 1983 report commissioned by then MPS Commissioner Sir David McNee from the Policy Studies Institute (**PSI**). The PSI report, entitled *Police in Action*, provides invaluable insights into contemporary policing culture, including police attitudes to women, which are characterised by what the PSI report describes as a '*cult of masculinity*', and also explains the operation of the powerful code of '*backing each other up*'. The report, which strongly corroborates the evidence to the Inquiry of HN304 Graham Coates, was produced after its researchers accompanied police officers on tours of duty over two years between 1980-1982. It is not clear whether the MPS disclosed the PSI report to the Inquiry. If they did not the Cat H CPs submit they should have done. A scanned copy accompanies this Closing Statement.
9. Appreciation of contemporary police culture, and the historical context, has a second key function: it helps explain **why** the law was so persistently flouted by the SDS, and **why** particular abuses of undercover powers, such as the abuse of women, or the infiltration of justice campaigns occurred, and persisted, uncorrected for decades, even when more stringent legal controls such as RIPA were introduced (see the IPT judgment *Kate Wilson v Commissioner of the Metropolis and National Police Chiefs Council* (NPCC) [2021] UKIPTrib IPT 11 167 H '*Wilson*'). It is the Cat H CPs case that the misconduct of the SDS, and the tolerance of its activities by senior police officers, including MPS Commissioners, can only be fully understood in the context of policing culture as a whole. The Cat H CPs submit that this exercise is important to discharge the UCPI's terms of reference, in order to fully assess the adequacy of '*the operational*

*governance and oversight of undercover policing*', and *'the selection, training, management and care of undercover police officers'*, and make informed recommendations on these matters for the future.

## II: SUMMARY

10. As the P3 O/S makes clear (see §12-18, §23-27), the evidence, including the oral evidence of SDS managers, demonstrates that the SDS' activities during T1 involved:

- (1) Serial breaches of key principles of the common law, including the prohibition on general searches, unjustified trespasses to land and to goods, and unjustified breaches of confidence;
- (2) Violations of the fundamental rights of numerous ordinary people under Articles 3, 8, 10, 11 and 14 European Convention on Human Rights (ECHR);
- (3) A breach of the public trust reflected in the Peelian principles<sup>12</sup>, and finally
- (4) A serious threat to democracy itself, in the secret infiltration, detailed recording and extensive monitoring of people's private lives and political views.

11. The evidence given in T1 also shows that:

- (1) Despite the serious invasions of homes and private lives inherent in SDS' operations<sup>13</sup>, the common law and human rights of individuals were never considered. Managers giving oral evidence thus told the Inquiry they did not think about these issues<sup>14</sup>.
- (2) The risk of UCOs having sexual relationships with women was known about<sup>15</sup> but the adverse effect on women was never considered<sup>16</sup>. The only risks considered important were those posed to the UCOs themselves<sup>17</sup> and to the integrity of the SDS's operations<sup>18</sup>.

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<sup>12</sup> Sir Robert Peel's 9 principles of policing

<sup>13</sup> {MPS-0740968/22} at §76; {MPS-0739804/5} at §20

<sup>14</sup> Moss T1P3 {Day5/34:19}-{Day5/37:18}; {Day5/40:12-23}; Moss T1P3 {Day5/177:7}-{Day5/179:8}; Craft T1P3 {Day8/63:18}-{Day8/64:1}; Butler T1P3 {Day10/27:12}-{Day10/29:9}.

<sup>15</sup> Bicknell {MPS-0726608/4}; McIntosh T1P3 {Day9/56:4-12}; Butler {Day10/78:1-3}.

<sup>16</sup> Harvey T1P2 {Day14/110:13}-{Day14/111:25}; Craft T1P3 {Day8/71:8-16}; McIntosh T1P3 {Day9/76:8-15}.

<sup>17</sup> T1P4 {MPS-0748061/39}.

<sup>18</sup> McIntosh T1P3 {Day9/75:19}-{Day9/76:7}

- (3) There was no proper accountability for wrongdoing in the SDS<sup>19</sup>. The secrecy and viability of SDS operations was placed above all other considerations, including telling the truth in court<sup>20</sup>.
12. The Cat H CPS re-iterate (see Cat HP3 O/S §§11-13 and §§16-18) that the wrongdoing they have suffered resulted from these failings.
13. They also submit, however, that these failings are inextricably linked to wider police culture. Contemporary materials authored by or commissioned by the police reveal that in the T1 period:
- (1) MPS officers including its Commissioners viewed legal constraints on police action as an impediment to policing which the police were required to evade in order to carry out their functions (see *McNee's Law*, Sir David McNee, 1983, p180-181, *In the Office of Constable*, Sir Robert Mark, 1978, p54-55, 58-59<sup>21</sup>);
  - (2) MPS officers engaged in widespread deviations from applicable rules and procedure so that a gap opened up between the 'working rules' of officers and the formal rules (see PSI Report, *The Police in Action*, 1983<sup>22</sup>, p169-72, p229-230; *In the Office of Constable*, Sir Robert Mark, 1978, p55-59);
  - (3) The MPS was dominated by a 'cult of masculinity' which glamourised violence and male physical courage, placed heavy emphasis on drinking as a test of manliness, and involved extreme denigration and sexualisation of women including women police officers (see PSI Report, *The Police in Action*, 1983, p91-97 and 339-40; see also Rob Reiner, *The Politics of the Police*, 1985<sup>23</sup>, p99-100; *An Inside Job*, Malcolm Young, 1991, p191-194; *Twenty three women police officers' experiences of policing in England*, Cunningham, Ramshaw, *International Journal of Police Science & Management*, 2020 vol 22(1), 31-33, *In the Office of Constable*, Sir Robert Mark, 1978, p. 61, p95, p231-2).
  - (4) MPS officers placed a high premium on solidarity, backed others up even where they had done something wrong, and would normally tell lies to prevent another

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<sup>19</sup> Craft T1P3 {Day8/25:7-15}; {MPS-0726956/50}

<sup>20</sup> Smith T1P3 {Day6/103:6}-{Day6/106:25}; {MPS-0526782/1} and {MPS0526782/2}.

<sup>21</sup> Pagination from Fontana Paperback Edition

<sup>22</sup> This report was commissioned by MPS Commissioner, Sir David McNee and was produced after researchers accompanied working police groups for two years (see *McNee's Law* p234; *Police in Action*, Preface and p316)

<sup>23</sup> First Edition. *Politics of the Police* is now in its Fifth Edition, 2019, OUP.

officer from being disciplined or prosecuted. They were known by senior officers to do so (PSI, *The Police in Action*, 1983, p70-71, 229).

(5) It was a general and accepted feature of policing that more junior police officers were unsupervised by more senior officers in most of their interactions with the public (PSI, *The Police in Action*, 1983, p274-285).

14. The Cat H CPs submit that these features of wider MPS culture and practice, of which the MPS were aware from at least 1983, because they were all highlighted to the MPS Commissioner by the PSI's *Police in Action* report, created obvious high risks to the public when combined with the secrecy and lack of accountability of the SDS. Throughout the T1 period defects in wider policing caused a long series of public scandals concerning endemic police corruption, miscarriages of justice and riots which generated widespread public concern about the police and had led to a range of steps being taken in an attempt to address some of these problems (see e.g. *In the Office of Constable*, Ch 7-8; *McNee's Law*, Ch 9; *Politics of the Police*, 1985, p65-68; *The Fisher Report on the Confait Case*, 1977, *The Scarman Report*, 1981 and further below). The SDS' conduct, on the other hand, remained secret and was impervious to outside scrutiny. The Cat H CPs submit that it is of profound concern that neither the MPS nor the Home Office took any steps to ensure greater supervision, accountability and control for the SDS despite their awareness of the obvious risks, and the sea-changes which took place elsewhere in policing as a result of public scandals and concern.

15. There is one feature of wider police culture to which the Cat H CPs will draw particular attention in this Closing. As indicated above, widespread misogyny, including of a highly sexualised nature, and deep-rooted sexual discrimination at the highest levels in the MPS was catalogued by the 1983 PSI *Police in Action* report to Sir David McNee. Thus, for example, under the heading Sex, Women, Sexual offences the report states (see p91):

*"In groups of policemen a certain pattern of talk about sex and women is expected...Bawdy talk is a kind of game among groups of men in which they play, in their imagination, the role of a man triumphing over a woman. For example, an older PC said that 'in the old days' WPCs when they first arrived at a police station were always stamped 'on the bare bum' with the station rubber stamp. This fantasy neatly symbolises the three chief impulses that animate this kind of conversational game: the treatment of a woman as a thing (like a form to be filled in or rubber-stamped), the humiliation of a woman and sexual assault on*

*her. Talk about women on this level is pervasive among groups of men in the Met; much of it is far more lurid and extreme than the small example quoted...*"

16. Similarly at p97 the report states:

*"In the attitudes and talk of the men, ideas about the limitations of women specifically as police officers merge imperceptibly into general views about the inferiority of women which again merge into sexual boasting and horseplay. Something of this mixture is caught in a single remark by an older PC, who said that 'a young girl will be no good in restraining a violent man as long as she has a hole in her arse'.*

17. Publicly denigrating and sexualising women police officers for 'holes' or 'splits' in their 'arses' seems to have been common-place in the police for decades; it is also recorded by an article chronicling women police officers' experiences in the 1990s: "...we were called split-arses"<sup>24</sup>. Equally long-lasting was the practice of stamping parts of women police officers' bodies with the station stamp. One of the victims of police officer and serial rapist David Carrick reports this happening as late as 2004.<sup>25</sup> These attitudes had 'a strong influence on policemen's behaviour towards women, towards victims of sexual offences and towards sexual offenders' (see *Police in Action* p 91) and were accompanied by deep structural discrimination including an 'unofficial' policy of keeping the number of women police to about 10% of the MPS (see *Police in Action* p339-340), and barriers to women doing certain types of work (see *Police in Action* p93-97).

18. The Cat H CPs submit that the PSI report, and other contemporary materials, strongly corroborate the evidence in T1 of those such as HN304 "Graham Coates", who admit to lurid and offensive sexual banter, and boasting about sexual relationships, and undermines the evidence of those who deny it (see further below).

19. In this Closing they accordingly invite the Chair to find that the misogyny and institutional sexism which was (and as recent events have demonstrated remains<sup>26</sup>), endemic in police culture was a strong contributing factor in:

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<sup>24</sup> Cunningham, Ramshaw, *Twenty three women police officers' experiences of policing in England*, International Journal of Police Science & Management, 2020 vol 22(1), p31-33

<sup>25</sup> One of David Carrick's victims who was also a Metropolitan police officer recalled that the practice of stamping parts of the anatomy of female officers with "property of the MET" continued into at least 2004. J. Burns and J. Kelly *David Carrick: Officer raped by Disgraced PC feared reporting him to bosses*, BBC news 6 February 2023 last accessed on 6 February 2023 at: <https://www.bbc.co.uk/news/uk-64492062>.

<sup>26</sup> Operation Hotton Learning Report published in January 2022 found "an underlying culture allowed conduct issues to permeate and behavioural problems went unchallenged." Available at: <https://www.policeconduct.gov.uk/sites/default/files/Operation%20Hotton%20Learning%20report%20->

- (1) The fact that UCOs entered into sexual relationships with members of the public in T1;
- (2) The failure of more senior officers in the SDS and MPS to take any steps to eliminate the obvious risk of such relationships;
- (3) The persistence of the sexual misconduct of UCOs over the T1 period, and beyond.

### III. 1968-1983: THE POLICING CONTEXT

#### A. Corruption, Miscarriages of Justice and Civil Disturbances

20. The T1 era was an especially febrile period for English policing. It was characterised by deep-rooted corruption, serious miscarriages of justice resulting from police wrongdoing, incidents of excessive use of force, and civil disturbances.
  
21. Some of this became public knowledge in the 1970s, prompting widespread public concern. Thus:
  - (1) Major corruption scandals broke relating to the actions of the MPS's CID, Drug Squad and Obscene Publication Squad in 1969, 1972 and 1975 (Reiner, *Politics of the Police*, 1985, p65-68, *In the Office of Constable*, p112-114), and again in relation to CID in 1978, (see *McNee's Law*, 1983, Ch 9, *Politics of the Police*, 1985, p66-68, John Alderson<sup>27</sup>, *Law and Disorder*, 1984, Ch 10). The public was shocked to discover so many police officers were taking bribes and working in concert with career criminals, and that there was a '*systematic, institutionalised and widespread network of corruption, the so-called 'firm within a firm'*'<sup>28</sup>.
  - (2) Longstanding concerns that the rights of criminal suspects were violated by police came to a head in the Maxwell Confait case, in which three teenage boys, including one with serious mental disabilities, were wrongly convicted in 1972 for murder after false confessions. After their convictions were quashed in 1975, an official inquiry (the "**Fisher Inquiry**") in 1977 found their rights had been violated by the

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[%20January%202022.pdf](#); the Angiolini Inquiry was established in November 2021 to investigate the issues raised by the abduction, rape and murder of Sarah Everard by Wayne Couzens, a serving Metropolitan police officer. The Terms of Reference for the Inquiry were updated in February 2023 to include the case of former PC David Carrick. <https://www.angiolini.independent-inquiry.uk/>. On 25 January 2023, Sir Mark Rowley, MPS Commissioner admitted that two to three Met Police Officers will appear in court every week including for sexual offences. L. Dearden, *Two to three Met Police officers including alleged sex offenders to appear in court every week*. 25 January 2023 <https://www.independent.co.uk/news/uk/crime/met-police-officers-court-rape-rowley-b2268832.html>

<sup>27</sup> Former Chief Constable of Devon and Cornwall

<sup>28</sup> Reiner, *Politics of the Police*, 1985, p65

police in a variety of ways and evidence emerged in 1979 exonerating them completely<sup>29</sup>.

- (3) Simmering tensions over the dysfunctional relationship between the police and ethnic minorities crystallised in the Brixton riots in 1981<sup>30</sup>.

22. Police re-organisation, a series of public inquiries in the 1970s and early 1980s<sup>31</sup> and ultimately legislative reform followed these events:

- (1) Internal reforms to tackle corruption were introduced by Commissioner Sir Robert Mark (1972-1976), who was brought in by the Home Secretary for that purpose, while Commissioner Sir David McNee (1976-1981) started the process of reforming police training.
- (2) A Royal Commission on Criminal Procedure was set up in the wake of the Fisher Inquiry. When it reported in 1981 it recommended legislative reform<sup>32</sup>. The result was the Police and Criminal Evidence Act 1984 (**PACE**), which codified police powers and corresponding safeguards for suspects in statute, and the Prosecution of Offences Act 1985 which established an independent prosecution body (the Crown Prosecution Service (**CPS**)).
- (3) A series of changes to the police complaints system were introduced by successive legislation in 1964, 1976 and 1984<sup>33</sup>, with the aim of strengthening it, although it was not until the Police Reform Act 2002 that there was an effort to introduce some independent oversight of the investigation of complaints with the establishment of the Independent Police Complaints Commission (IPCC).
- (4) The 1981 Scarman Inquiry located the responsibility for the Brixton riots in racial disadvantage and discrimination in society as a whole, and in police conduct which exacerbated and inflamed tensions resulting from that racial disadvantage<sup>34</sup>. The Scarman Report's recommendations to improve police

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<sup>29</sup> See Reiner, *Politics and the Police*, 1985, p68-69; Fisher Report at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228759/0090.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228759/0090.pdf); and <https://www.thejusticegap.com/cases-the-changed-us-maxwell-confait/>

<sup>30</sup> Reiner, *Politics and the Police*, 1985, p70-72

<sup>31</sup> See Annex for List of Public Inquiries and reports prompted by police conduct in the 1970s and 1980s.

<sup>32</sup> Royal Commission on Criminal Procedure, Cmnd 8092.

<sup>33</sup> Police Act 1964, Police Act 1976 and Police and Criminal Evidence Act 1984 (PACE)

<sup>34</sup> Scarman Report, Conclusions at §8.1-§8.42

training and to require police authorities to consult with local communities on matters relating to policing in their areas were accepted<sup>35</sup>.

23. Other police wrongdoing in the T1 era such as that leading to the wrongful convictions of the Guildford Four (police fabrication of evidence and lying in court)<sup>36</sup>, the Maguire Seven<sup>37</sup> and the Birmingham Six (police deception and fabrication of evidence)<sup>38</sup> all in 1975, and the defendants in the Carl Bridgewater case in 1979 (confession obtained by police deceit)<sup>39</sup>, was only revealed much later. These and other miscarriages of justice from the 1970s, including the wrongful conviction of serial fantasist Judith Ward as an IRA bomber, led the courts in the 1990s to re-iterate the importance of disclosure obligations in criminal trials<sup>40</sup>, and the government to announce, in 1991, another Royal Commission on Criminal Justice<sup>41</sup>.

24. There was also considerable political controversy about Special Branch monitoring the activities of people who are “*merely undertaking proper political or industrial activity*”<sup>42</sup>. This led to a 1984-5 report by the Home Affairs Select Committee into the work of Special Branch.<sup>43</sup> Notably neither the Home Office nor the MPS disclosed the existence or the activities of the SDS to the Committee; had they done so, it is very unlikely the report would have concluded that ‘*the special branches of the police service...do not justify public anxiety*’<sup>44</sup>.

25. Significantly, like the activities of the SDS and NPOIU, none of these events reached public awareness through the actions of the police themselves, but as a result of external media investigations, legal campaigns or political interventions. Equally none of the changes made in response to exposed police wrongdoing were stimulated by the police.

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<sup>35</sup> Reiner, 1985, p195

<sup>36</sup> *R v Richardson*, [1989] C.L.Y. 752; see also Report of Sir John May, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235647/0449.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235647/0449.pdf), §§21.5-6

<sup>37</sup> *R v. Maguire* [1992] Q.B. 936

<sup>38</sup> *R v McIlkenny and others* (1991) 93 Cr. App. R. 287 at 304-310 and 318

<sup>39</sup> *R v Hickey* [1997] EWCA Crim 2028

<sup>40</sup> *R v Ward* [1993] 1 W.L.R. 619

<sup>41</sup> The Royal Commission on Criminal Justice Cmd. 2263 chaired by Lord Runciman.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271971/2263.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/271971/2263.pdf)

<sup>42</sup> {UCPI0000004427/3} at §6.

<sup>43</sup> {UCPI00000035090/2}; {UCPI00000035160}

<sup>44</sup> {UCPI00000035160/10} §23.

26. It is in this context that the misconduct of the SDS (see Cat H P3 O/S §11-18, §23-27 and below) occurred. Unlike other wrongdoing in T1 the SDS's conduct remained both unknown and uncorrected until almost 50 years later when it was exposed by the events leading to the establishment of the UCPI. Protected by a veil of secrecy, the misconduct didn't just continue into the 21<sup>st</sup> century, it appears to have got worse (see IPT judgment in *Wilson*).

## **B. Police culture: 1983 PSI *Police in Action* report**

27. In 1980, then MPS Commissioner Sir David McNee invited the PSI to conduct an independent study of '*relations between the Metropolitan Police and the community it serves*' (see PSI, *Police in Action*, p316-7). The research was funded by the MPS and the City Parochial Foundation (see Preface), and PSI was granted access to police officers at all levels in the organisation and allowed to observe all kinds of police work over two years between 1980-82 (see p316<sup>45</sup>). The resulting 1983 report, which was laid in the House of Commons library, was in four parts: (i) A survey of Londoners, (ii) A group of young Black people, (iii) A Survey of police officers and (iv) The police in action. The fourth volume, *Police in Action* was produced after the authors spent two years accompanying police officers as they worked and contains their observations and analysis (see Preface and p1). The report identified significant failings in police culture and practice, and made recommendations, at least some of which both the Commissioner and the Home Secretary accepted<sup>46</sup>. The failings identified included those which were ultimately found to be responsible for the serious miscarriages of justice described above (see p207-228).

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<sup>45</sup> See assurances given to Parliament about police co-operation with the PSI (HC) Deb 18 October 1982 vol 29 <https://api.parliament.uk/historic-hansard/written-answers/1982/oct/18/metropolitan-police>

<sup>46</sup> See e.g.: (HC) Deb 6 December 1983, Vol 50 Col 109 [https://hansard.parliament.uk/Commons/1983-12-06/debates/0e9675e0-da37-462c-b7c8-c10cfa70abc3/London\(Policing\)](https://hansard.parliament.uk/Commons/1983-12-06/debates/0e9675e0-da37-462c-b7c8-c10cfa70abc3/London(Policing)); (HC) Deb 1 December 1983, Vol 49 [https://hansard.parliament.uk/Commons/1983-12-01/debates/50c0153b-58fc-416d-8ef8-47169bdcf610/MetropolitanPolice\(Recruitment\);\(HC\)PoliceandCriminalEvidenceBillVol48,Col26](https://hansard.parliament.uk/Commons/1983-12-01/debates/50c0153b-58fc-416d-8ef8-47169bdcf610/MetropolitanPolice(Recruitment);(HC)PoliceandCriminalEvidenceBillVol48,Col26) [http://hansard.millbanksystems.com/written\\_answers/1982/oct/18/metropolitan-police](http://hansard.millbanksystems.com/written_answers/1982/oct/18/metropolitan-police) <https://hansard.parliament.uk/commons/1983-11-07/debates/dd00544b-7ace-4aa1-9128-c7e0c28122ae/PoliceAndCriminalEvidenceBill>. The Cat H CPs have not been able to locate any public statement from the MPS Commissioner himself responding to the PSI study.

28. It is the Cat H CPs case that *Police in Action* contains insights into MPS practice and culture which are of critical relevance to understanding the conduct of the SDS in T1 in five key areas:

- (1) Compliance with legal rules and standards;
- (2) Attitudes to women;
- (3) Wrongdoing by fellow officers;
- (4) Use of force in controlling public disorder.
- (5) Supervision.

29. It is not clear whether the MPS has disclosed this report to the UCPI.

**a) Legal rules and standards**

30. *Police in Action* explains (p170-171) that not all rules which originate from the law and other sources such as the Judges' Rules (the rules on arrest, detention and evidence which preceded PACE) are treated equally by the police. Rules can be divided into three types:

- (1) Working rules. These rules are internalised by police officers to become guiding principles of their conduct. They are guiding principles because the police believe it is wrong to break those rules.
- (2) Inhibitory rules are those which are not internalised but which police officers take into account when deciding how to act and which tend to discourage them from behaving in certain ways in case they should be caught and the rule invoked against them.
- (3) Presentational rules exist to give an acceptable appearance to the way that police work is carried out.

31. Rules have '*a variable influence on policing behaviour, depending on what kind of rule they are taken to be, on how they are interpreted and used by senior officers, on how they interact with the norms and objectives of working groups of police officers... (p171). "There are therefore considerable dangers in the simple response to accounts of bad policing behaviour: that is, just suggesting more rules. If these additional rules turn out to be presentational ones, then this is a way of pretending to take action without willing the means"* (p172).

32. These conclusions were accepted by then Home Secretary Leon Brittan when introducing PACE to Parliament in November 1983. He stated:

*“Hon. Members will no doubt have seen recent references in the press to a draft report on the Metropolitan police by the Policy Studies Institute. That report, which is to be published very soon, makes the point that rules and legal constraints are not, by themselves, sufficient to ensure that powers are used properly.*

*The management deficiencies outlined in the report were identified by the present commissioner<sup>47</sup> when he first took office and he has already taken many steps to remedy them. Indeed, the commissioner has said that securing citizens’ rights must be a central objective of the police service. I wholeheartedly endorse that and I fully accept that merely having a proper legal framework is not the whole answer. However, that is not a reason for not having such a framework”<sup>48</sup>.*

33. Unfortunately, the hallowed principles of common law intended to protect citizens against intrusions into their homes and private lives (see Legal Framework at §§1-31) fell into the category of inhibitory rules, rather than working rules, as Sir David McNee explained in his 1983 biography *McNee’s Law* (p180-181):

*“In the past, the police...have been dealing with a population which, in the main, was ignorant of its civil rights. Because Parliament had become very reluctant to face up to the necessity of giving the police adequate powers to deal with crime, officers have been expected to rely upon this ignorance when making the necessary inquiries and tests for the solving of crime....*

*Parliament...has given no...wide powers to police to deal with violence or threatened violence to the public. .The effect of this is that many police officers have...learned to use methods bordering on trickery or stealth in their investigations. They have frequently risked civil actions when doing so, but until the last decade the number of civil actions brought against police officers was extremely small...I consider it quite wrong that police officers...should be expected by stealth or by force, and at the risk of an action for trespass, to exercise necessary powers in the investigation of crime...Actions against my officers and myself arising out of arrests, searches etc had risen from 16 in 1967 to 182 in 1982. There are a number of reasons for this increase, one of which...is a greater knowledge by individuals of their rights and of the high monetary awards sometimes made by civil courts, together with the monitoring activities of professional bodies concerned with individual rights and of the media....it is now increasingly clear that the days when investigating officers could expect to bluff their way into obtaining consent to take body samples, or enter premises, were numbered.”*

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<sup>47</sup> Sir Kenneth Newman became MPS Commissioner in 1982

<sup>48</sup> (HC) Police and Criminal Evidence Bill, 7 November 1983 Vol 48, Col 28.

<https://hansard.parliament.uk/commons/1983-11-07/debates/dd00544b-7ace-4aa1-9128-c7e0c28122ae/PoliceAndCriminalEvidenceBill>

34. These sentiments were echoed by Sir Robert Mark in his biography (see *In the Office of Constable*, 1978, p54-55, 58-59), and they go a long way to explaining why no one in the MPS, from top to bottom, seems to have given a second thought to the legality of the SDS' practices of tricking their way into people's private homes, stealing their confidential information or invading their private lives (see below): quite simply such practices were considered acceptable by the police, including its most senior officers. They even seemed to consider this approach had the support of the judiciary (see *McNee's Law* p180, referring to remarks of Lord Denning in *Ghani v Jones* [1970] 1 QB 693). Nor would the legal framework introduced by Leon Brittan make any difference to this approach, as the events of later Tranches are likely to show (see IPT judgment in *Wilson*). Given that the SDS did not seek to gather evidence in support of criminal prosecutions, the reforms of PACE left the SDS untouched. As for the risk of a civil action in trespass, there was none, as the police believed the public would never find out about the SDS' operations.

**b) Attitudes to women**

35. At the time *Police in Action* was produced 9% of police officers were women. The report concluded this proportion was deliberate; it was unofficial MPS policy to keep the proportion of women at about 10%, even though this amounted to unlawful discrimination under the Sex Discrimination Act 1975 (p339-40). There were also barriers to women doing certain types of police work (see *Police in Action* p93-97). In the wake of *Police in Action*, the Home Secretary reported to Parliament on 1 December 1983 that the Commissioner had committed to 'drop the 10 per cent quota on the recruitment of women and...review his recruitment policies as a matter of urgency'<sup>49</sup>.

36. The quota on women police officers was accompanied by what *Police in Action* described as 'a great deal of prejudice' against women (p340). That prejudice did not only manifest itself in pervasive discrimination against women police officers. It was an inherent part of the culture of the MPS.

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<sup>49</sup> (HC) Deb 1 December 1983 Vol 49 [https://hansard.parliament.uk/Commons/1983-12-01/debates/50c0153b-58fc-416d-8ef8-47169bdcf610/MetropolitanPolice\(Recruitment\)](https://hansard.parliament.uk/Commons/1983-12-01/debates/50c0153b-58fc-416d-8ef8-47169bdcf610/MetropolitanPolice(Recruitment))

37. In a section of its report entitled *Sex, women, sexual offences, Police in Action* described that culture in terms which are strikingly similar to the conclusions of the IOPC's Operation Hotton report about police officers in Charing Cross station forty years later in February 2022<sup>50</sup>. Key findings from the report are (*Police in Action* p91-97, compare to Operation Hotton Learning Report §§16-22, §31-39):

- (1) The dominant values of the Force are still in many ways those of an all-male institution such as a rugby club or boys' school.
- (2) This shows itself in the emphasis placed on masculine solidarity and on backing up other men in the group especially when they are in the wrong, the stress on drinking as a test of manliness and a basis for good fellowship, the importance given to physical courage and the glamour attached to violence.
- (3) This set of attitudes amounts to a 'cult of masculinity' which also has a strong influence on policemen's behaviour towards women, towards victims of sexual offences and towards sexual offenders (see also p87 and p90).
- (4) In groups of policemen a certain pattern of talk about sex and women is expected.
- (5) Bawdy talk is a kind of game among groups of men in which they play, in their imagination, the role of a man triumphing over a woman. For example, an older PC said that 'in the old days' WPCs when they first arrived at a police station were always stamped 'on the bare bum' with the station rubber stamp. This fantasy neatly symbolises three chief impulses: the treatment of a woman as a thing (like a form to be filled in or rubber-stamped), the humiliation of a woman and sexual assault on her.
- (6) Police officers also tell stories about sex. At one police station the main subject of jokes for a considerable time was a story about two young PCs who were supposed to have 'had it for free' with a prostitute while working a night shift in a panda car. For the story to have become current, they must have boasted that they had picked up the prostitute and taken her back to her flat, where they 'accepted the invitation'. When this story was repeated, the two PCs made no attempt to deny it.

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<sup>50</sup> IOPC, Operation Hotton: Learning Report, January 2022.

<https://www.policeconduct.gov.uk/sites/default/files/Operation%20Hotton%20Learning%20report%20-%20January%202022.pdf>. It is not clear whether the IOPC had access to the *Police in Action* report. It shows that the MPS has known about these attitudes for forty years, and that they are not confined to Charing Cross police station.

- (7) In another example three experienced PCs considered to be good policemen engaged, while on duty, in a great deal of conversation about sex, in very gross language in which the men were always conquerors and the women 'slags' and 'whores'. There was extensive boasting about drink, and this talk about sex, women and drink was interspersed with descriptions of violent incidents that the PCs had witnessed, heard about or taken part in. (p87).
- (8) Some PCs take every opportunity to give detailed accounts of reported rape cases. The men involved in this kind of conversation sometimes imply not only that the woman probably enjoyed the experience but also that they would have liked to have committed the offence themselves. For example, a CID officer went to interview two teenage girls (the younger one aged 14) who alleged that they had been sexually assaulted in the flat where they lived. He came back saying that they had played the man along and that he found the two girls very 'tasty' himself.
- (9) In the attitudes and talk of the men, ideas about the limitations of women specifically as police officers merge imperceptibly into general views about the inferiority of women which again merge into sexual boasting and horseplay. Something of this mixture is caught in a single remark by an older PC, who said that 'a young girl will be no good in restraining a violent man as long as she has a hole in her arse'.
- (10) Homosexual jokes are fairly common. The complement to this is a very strong condemnation of homosexuals among many policemen.
- (11) **Talk about women on this level is pervasive among groups of men in the Met; much of it is far more lurid and extreme than the small example quoted.**
- (12) In all of these ways policemen are adopting the pattern of values and responses that they think is expected within what still remains essentially a group of men. At a minimum they are expected not to show dissent. Although as individuals these policemen have very varied characteristics, and in other contexts (for example with their families) they probably behave quite differently, it is the group values which have the greatest effect on the women in the Force.
38. These findings are echoed elsewhere (see e.g. Malcolm Young, *An Inside Job*, 1991, p191-194; Cunningham, Ramshaw, *Twenty three women police officers' experiences of policing in England*, *International Journal of Police Science & Management*, 2020 vol 22(1), 31-33). Nor were these attitudes confined to the lower ranks, unsurprisingly

given that senior officers ordinarily rose through the ranks. Thus in several places in his biography *In the Office of Constable*, Sir Robert Mark makes sexualised and discriminatory remarks about women police officers and displays nonchalance about police officers having sex with women members of the public while on duty (see p. 61, p95, p231-2).

39. As indicated above, and further below, the PSI report:

- (1) Strongly corroborates the evidence of HN304 “Graham Coates” about the prevalence of sexual banter, and undermines the evidence of those who deny it. As “Graham Coates” told the UCPI in his oral evidence, the “*nuts and bolts of the humour, so-called, were the same*” and “*it made precious little difference...whether one was a mainstream CID or uniform officer or a Special branch officer*”<sup>51</sup>.
- (2) Explains why many officers felt no compunction in entering into sexual relationships with women, and did not feel the need to report it to senior officers. As Vince Harvey explained, it was not of “*much importance*”<sup>52</sup>.
- (3) Helps explain why managers did not even acknowledge still less consider the adverse effect on women of relationships, or take any meaningful steps to avert the risk of them which they acknowledged arose (see §§116-122).

### c) Wrongdoing by fellow officers

40. Part of the ‘cult of masculinity’ is backing up others in the group (see *Police in Action* p70-75, p91 and p229). Thus:

- (1) The solidarity among police officers generally, and particularly among small groups who work together, is extremely strong.
- (2) The researchers were told many times that an officer who had done something wrong would always, or almost always, be backed up by other officers even if they didn’t like him.
- (3) By way of example of this code, a uniform sergeant in charge of a crime squad was asked whether he would ‘shop’ one of his mates who had committed a serious assault on a prisoner. He said:

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<sup>51</sup> HN304 T1P2 {Day12/37:20}-{Day12/38:1}

<sup>52</sup> HN354 §§168-169 {MPS-0747657/36}

*'No, I never would. If one of the boys working for me got himself into trouble, I would get all of us together and I would literally script him out of it. I would write all the parts out and if we followed them closely we couldn't be defeated. And believe me, I would do it.'*

When asked if it was wrong for police officers to get away with assaulting prisoners, especially as this would involve a conspiracy to cover up the evidence.

He said *"Oh yes but when it was all over I wouldn't want anything to do with him'.*

- (4) The thinking was that internal justice administered informally was far preferable to justice through the machinery of the complaints and disciplinary system of the force, partly because the penalties imposed were seen to be too severe, and partly because discipline was seen as something imposed from the outside which threatened the group as a whole.
- (5) Officers will thus normally tell lies to prevent another officer being disciplined or prosecuted. The officers who investigate complaints, such as chief inspectors in charge of complaints, accepted that police in the lower ranks almost always back each other up and normally tell lies, and have developed alternative methods of dealing with misconduct. Accordingly where they can't substantiate the complaint, but are certain of guilt they *'let [the officer] know.'*

41. This *'powerful code which enjoins officers to back each other up in the face of external examination'* has been emphasised in multiple studies (Reiner, *Politics of the Police*, 1985, p93). It is *'a protective armour shielding the force as a whole from public knowledge of infractions'* (ibid). The *'them and us outlook'* is characteristic of police culture (ibid).

#### **d) Use of force in public disorder**

42. The *Police in Action* report concludes (p173) that the great majority of police officers treat the principle that they may only use what force is necessary in the execution of their duty as a *'working rule'*. This means that *'the great majority of police officers habitually try to avoid using more force than is necessary in spite of the glamour attaching to violence and the tendency to brag about being in fights'*. The report offers two *'very important qualifications'*:

- (1) A minority of officers treat the rule as an *'inhibitory rule'* and will use excessive force if they think they have a chance of getting away with it.

- (2) Officers at all levels in the MPS ‘operate with different working rules when dealing with a major public disturbance or riot’. ‘In circumstances like the Brixton riots, officers seem to switch into a different ‘mode’ in which they think the normal rule no longer applies’.

43. The report goes on to explain (see p190-1, emphasis added):

*“We have little or no **observational** evidence about the behaviour of police officers during outbreaks of serious public disorder. From what police officers **said** about the riots of 1981, it was quite clear that in those circumstances they ‘switched into a different mode’. They saw themselves as engaged in a battle with large numbers of people conceived of as a group and not as individuals who might or might not have committed an offence. Because they saw themselves as fighting a crowd rather than trying to arrest individuals or defending themselves from individual attackers, the principle of using no more force than is necessary could not be applied in the usual way. From what officers said, there were many cases where officers beat people whom they were not at that time trying to arrest or to disperse (since the street was sealed off) and who were not at that moment attacking them...*

*One PC accused senior officers of hypocrisy... He said he found it infuriating that in the riots ‘they (the guvnors) thought all was fair in love and war’ and made clear to PCs that it was all right to use indiscriminate violence, even if they...knew about it or saw it; whereas now, in ‘peace time’ you had to be careful not to be caught.” (emphasis added)*

*[This].. underlines the point that the behaviour of the police during events like the 1981 riots is much less constrained by the law and the discipline code than at normal times because there is little chance of evidence about the behaviour of individual officers emerging from the confused situation of a riot.”*

#### **e) Supervision**

44. *Police in Action* observes that it is a striking feature of MPS police work that individual constables carry out their duties for the most part without any supervision by more senior officers (p274). There are some occasions when supervisory officers see constables doing police work, but these are exceptional, so that supervisory officers are seldom in a position to form a balanced judgement, based on their own observation, of how an individual officer approaches his job. In the MPS supervision generally means looking at paperwork such as diaries, messages or log books (p274). In addition:

- (1) The style of management is based on the military model and is essentially authoritarian. The lack of consultation in decision-making leads to a failure to get

officers to adopt goals and norms that are useful for the organisation as guiding principles of their own behaviour (p300).

- (2) Managers take an extremely superficial view of whether police officers are achieving success, by for example assessing the number of arrests and stops (p303-4).
- (3) The command structure is too long, so that operational officers feel very distant from those making decisions, the responsibility of senior officers tends to be diluted by the existence of many intermediate ranks, and individual officers can often evade responsibility (p311).

45. Given that there is already often a conflict between the informal objectives and norms of working groups of police officers, and the formal objectives and rules of the organisation (see above), the authoritarian style of management tends to make the gap wider because managers become distant from working groups and do not try to persuade them to adopt objectives that fit with the organisation's objectives. In extreme cases (see p314) this leads to *'a double-think whereby a manager expects a working group to break formal rules but expects the groups to be careful to prevent him from getting to know about it, because if he got to know he would either have to back them up and be implicated, or would have to punish them for doing something he expects them to do'*. This pattern of management, and the attitudes that go with it among managers and the lower ranks, are extremely destructive of any attempts to improve the quality of policing (see p314).

46. Other commentators have also remarked on the functional advantages for the police of *'a gulf and conflict between 'street' and 'management' orientations'*. *"It allows presentational strategies to be adopted by management levels in real ignorance of what these might cover up, while at the same time the sacrifice of some individuals as 'bent' ratifies the effectiveness of the disciplinary process as a whole"* (see Reiner, *Politics of the Police*, p93).

### III. EVIDENCE ABOUT THE SDS' ACTIVITIES

#### A. Summary

47. As set out in their P3 O/S, and in more detail below, the evidence shows that in the T1 era:

- (1) The SDS closely monitored, recorded and influenced the lawful exercise of fundamental democratic rights, including freedom of expression and political thought, freedom of assembly, and political association, of members of the public.
- (2) In doing so SDS UCOs entered private homes, infiltrated private and family lives and invaded the personal and private dealings of members of the public. The UCOs passed all the information they gathered out, including highly confidential information about people's private lives, medical information and banking details, to be recorded in police files.
- (3) No one, either in the SDS, the MPS or the Home Office considered it necessary to respect the common law and human rights of individuals, and they did not consider the impact on those rights of SDS activities.
- (4) Instead the Home Office, MPS and SDS prioritised the secrecy and security of SDS operations and the interests of police officers over all other concerns including legality, the rights of members of the public and their obligations to the court.
- (5) There was little or no guidance or training on any aspect of the undercover role, the actions of the SDS;
- (6) The SDS's UCOs were not subject to any meaningful internal or external limits and controls and there was no accountability in any forum for the SDS's actions.
- (7) The necessity for the UCO's deployment or for the SDS as a whole was never properly considered.
- (8) There was a high risk that UCOs would enter into deceitful sexual relationships with female members of the public, and they did so in fact. Senior police officers, including Commissioners, were aware of that risk of deceitful sexual relationships, and that they took place/or were likely to have taken place, but no effective steps were taken to combat that risk.

48. It is the Cat H CPs case, furthermore, that both the acts of UCOs in engaging in sexual relationships, and the failure of senior police officers to take sufficient steps to combat the risk of them, resulted in significant part from misogynist and discriminatory attitudes to women and a '*cult of masculinity*' within the MPS. Those attitudes were so pervasive they amounted to endemic or institutional sexism.

## B. Approach to MPS 'evidence

49. The Cat H CPs have set out below the written and oral evidence which supports these factual propositions. Many of them are either uncontroverted or uncontrovertible. Where there is dispute, such as in relation to MPS knowledge and awareness of sexual relationships taking place, the Cat H CPs submit that the Chair should take the following matters into account:

- (1) As explained above, the PSI *Police in Action* report demonstrates the existence of a pervasive culture in the MPS of police officers backing each other up, **especially** when they have been involved in wrongdoing (p70-75 and p91). This culture seriously undermines disciplinary processes, or external supervision, and amounts to a '*powerful code*' (Reiner, p93) protecting individual officers and the organisation as a whole from external scrutiny.
- (2) Compliance with this powerful code means police officers will normally tell lies to prevent **another officer** being disciplined or prosecuted (see *Police in Action*, p229).
- (3) The Attorney General's undertaking does not address the impact of this powerful code; it only provides immunity for the individual in respect of evidence they have given about themselves (see letter of 28 August 2016<sup>53</sup>).
- (4) By way of example:
  - (i) The only officers in the T1 period whom other SDS' officers have been prepared to acknowledge may have had sexual relationships with activists are Rick Clark and HN300, Jim Pickford, both of whom are deceased. In both cases even though the evidence is overwhelming, many SDS officers have denied knowing about it at the time or have denied it happened during SDS deployment, presumably to avoid implicating other SDS officers who must have known about these relationships.
  - (ii) Vince Harvey has given evidence that he himself engaged in several sexual relationships but has denied telling anyone about it (which would implicate those he told),<sup>54</sup> and has denied hearing any sexual banter<sup>55</sup> or

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<sup>53</sup> Attorney General's Undertaking dated 28 August 2016 <https://www.ucpi.org.uk/wp-content/uploads/2016/09/160828-letter-AGO-to-UCPI-undertaking.pdf>

<sup>54</sup> Harvey {MPS-0747657/35} at §§165, 169; T1P2 {Day14/114:8-21}.

<sup>55</sup> Harvey T1P2 {Day14/69:21-22}.

knowing about any other sexual relationships even though he served at the same time as Rick Clark who was his friend<sup>56</sup>.

- (iii) The only officer who has given forthright evidence about explicit sexual banter (which the *Police in Action* report shows was pervasive in the MPS) is Graham Coates<sup>57</sup> (others such as Geoffrey Craft and Angus McIntosh have admitted it reluctantly and many have denied it). It is notable that he left the MPS early without rising to senior rank (see §153-156 of his statement)<sup>58</sup>.
- (iv) Several officers have expressed anger about the actions of officers which have led to the UCPI exposing the work of the SDS<sup>59</sup>.

### C. The facts

#### a) Monitoring the lawful exercise of fundamental rights

50. The organisations monitored by the SDS included:

- (1) Political parties<sup>60</sup>.
- (2) Organisations campaigning in solidarity for other countries<sup>61</sup>.
- (3) Anti-racism organisations.<sup>62</sup>
- (4) Anarchists<sup>63</sup>.
- (5) “Pro-Irish” Groups.<sup>64</sup>
- (6) Women’s rights Campaigning organisations<sup>65</sup>
- (7) Local Residents’ organisations<sup>66</sup>.
- (8) Peace Campaign groups<sup>67</sup>.
- (9) Student’s rights organisations<sup>68</sup>
- (10) Justice Campaigns<sup>69</sup>.

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<sup>56</sup> Harvey T1P2 {Day14/63:10-24}.

<sup>57</sup> Coates T1P2 {Day12/36:9}-{Day12/38:6}.

<sup>58</sup> Coates {MPS-0742282/46}.

<sup>59</sup> HN126 {MPS-0740761/85}; HN336 {MPS-0739316/24}; HN307 {MPS-0747658/5}.

<sup>60</sup> The Independent Labour Party dissolved in 1975 when the organisation rejoined Labour Party.

<sup>61</sup> {MPS-0728972}; {MPS-0728971/4}; {MPS-0728975/2}.

<sup>62</sup> {MPS-0728971/1}

<sup>63</sup> {MPS-0728973/5}.

<sup>64</sup> {MPS-0728972/1}; {MPS-0728980}.

<sup>65</sup> {MPS-0728971/4}; {MPS-0728970/9}

<sup>66</sup> {MPS-0728971/4}; {MPS-0730906/9}.

<sup>67</sup> {MPS-0728972/1}

<sup>68</sup> {MPS-0728970/9}; {MPS-0728964/7}.

<sup>69</sup> {MPS-0730906/9}

51. Members of groups targeted by the SDS were lawfully exercising their rights to freedom of expression and assembly, for example:

- (1) 'Mary' was "*a person who considered myself a socialist, a person who was defending civil liberties, democracy and human rights. In order to campaign effectively, it required challenging the state, which is our legal right and responsibility as citizens. At no point was I ever involved in conspiracies or discussions to involve myself in illegal or violent activities*"<sup>70</sup>.
- (2) 'Madeleine' sought to achieve change through "*peaceful, democratic means which included supporting campaigns around specific sites of conflict such as strikes against cuts in public sector funding and services, and for better pay and conditions*"<sup>71</sup>.
- (3) Diane Langford co-founded the Women's Liberation Front and the Women's Equal Rights Campaign and was part of the organising committee for the Women's Liberation Committee. She had "*never been involved in any criminal activity.*" And her "*activism has always been open and through the usual democratic means from lobbying the government to attending demonstrations*"<sup>72</sup>.
- (4) "[T]he WRP did not plan for public disorder at demonstrations or violence. Our objective was to use constitutional and trade union tools to obtain power and effect change"<sup>73</sup>.
- (5) The Anti-Apartheid Movement "*was committed to the principle of non-violence*"<sup>74</sup>.

52. Special Branch reports at the time recognised that groups being monitored by the SDS often posed no threat to the state<sup>75</sup>, and in some cases infiltration was expressly stated for the purpose of some prospective, and as yet unknown, risk of public disorder<sup>76</sup>. The SDS also recognised that many organisations they targeted did not pose a threat to public order nor were they subversive<sup>77</sup>.

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<sup>70</sup> 'Mary' {UCPI0000034181/10} at §3(xviii).

<sup>71</sup> 'Madeleine' {UCPI0000034313/6} at §17.

<sup>72</sup> Diane Langford {UCPI0000034348/10-11} at §33-38.

<sup>73</sup> Leicester {UCPI0000034740/9}.

<sup>74</sup> Guernsey {UCPI0000034326/11}.

<sup>75</sup> Special Branch Annual Report 1970 {MPS-0747835/3}; see also UCPI0000035236/12}; {UCPI0000035255};{UCPI0000035229/4} at §4 and {UCPI0000035257/4} at §10; {UCPI0000035236/12} and {UCPI0000035255}

<sup>76</sup> {MPS-0747786/4} see also {MPS-0728973}.

<sup>77</sup> HN106 ("Barry Tompkins") {MPS-0745735/38}

- (1) Camden VSC “...were revolutionary inasmuch as they wanted a change of government but they were not going to obtain this through violent means.”<sup>78</sup> There was no “... public disorder”<sup>79</sup>.
- (2) The Troops Out Movement “... had no subversive objectives and ...did not employ or approve the use of violence to achieve its objectives”<sup>80</sup>.
- (3) The Workers Revolutionary Party (WRP) had the same objectives of all Trotskyist groups “revolution... However, I never heard violence mentioned at any time, nor did I ever witness any violence within the WRP”<sup>81</sup>.
- (4) HN340 (“Alan Nixon/ Alan Bailey”) did “not witness any public disorder”<sup>82</sup>.
- (5) The SWP attracted all sorts of people “most of them were entirely peaceful” although there were “elements within the SWP that looked to cause trouble...”; At the time “Special Branch were not concerned that [SWP] presented a threat our [sic] democracy”<sup>83</sup>.
- (6) Reporting on the East London Workers Against Racism was not relevant to public order<sup>84</sup>.
- (7) HN106 (“Barry Tompkins”) reported on a campaign about ethnic minorities being “prevented from living in this housing estate because of their position on the housing waiting lists”<sup>85</sup>.
- (8) HN345 (“Peter Fredericks”) monitored a group “who wanted to help Bangladeshis and raise awareness of their plight” and their objective was to “go to the war zone to build homes for those who had been forcibly removed. The group did actually do this”<sup>86</sup>.
- (9) HHN345 (“Peter Fredericks”) attended demonstrations where there was “no imminent public order threat nor even a uniformed police presence”<sup>87</sup>.
- (10) HN326 assumed that he was asked to report on a meeting of the Action Committee against NATO because “there was a general worry about NATO”<sup>88</sup>.

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<sup>78</sup> {MPS-0738576/31}

<sup>79</sup> {MPS-0738576/42} at §234

<sup>80</sup> HN298 {MPS-0746258/47}; Craft T1P3 {Day8/106 :9-21}.

<sup>81</sup> HN298 {MPS-0746258/50}.

<sup>82</sup> {MPS-0740414/32} at §99.

<sup>83</sup> HN106 {MPS-0745772/35}.

<sup>84</sup> Butler T1P3 {Day10/53:24}-{Day7/54:1}.

<sup>85</sup> HN106 {MPS-0745735/11} at §35.

<sup>86</sup> {MPS-0741109/23} at §56.

<sup>87</sup> {MPS-0741109/25} at §63.

<sup>88</sup> {MPS-0738584/31} at §127.

(11)HN326 also infiltrated DMC which was “concerned with a dam in Mozambique or South Africa and it had something to do with South African politics too”<sup>89</sup>.

(12)HN299/342 (“David Hughes”) reported on a Marxist class that he attended in Streatham<sup>90</sup>.

**b) Entry into private homes**

53. UCOs entered private homes to attend meetings held by their target groups.<sup>91</sup> It was an explicit objective of the SDS to obtain entry into private meetings.

(1) “The main advantages of the SDS were that UCOs were able to gain regular entry to private meetings and obtain full names of attendees and details of what was discussed”<sup>92</sup>.

(2) “the normal practice in Special Branch to attend public meetings of groups that were of interest, including groups who might cause disorder at public demonstrations. The role of SDS officers was very different...They would also have access to private meetings...”<sup>93</sup>.

54. SDS Managers were aware of UCOs attending the private homes of individuals in their cover identities but did not advise them against this: “I told my senior officers, and there was no suggestion that I should not attend because the meetings were held in people’s homes”<sup>94</sup>.

55. UCOs socialised with individuals they met in their cover identities and attended personal and intimate events such as the weddings<sup>95</sup>, funerals<sup>96</sup>, and birthday parties<sup>97</sup>. One officer said he “deliberately attempted to cultivate” a relationship with a couple and they would “meet on a fairly regular basis.... I babysat for their young [redact][child] on occasions”<sup>98</sup>. He said that they would share details of their lives with

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<sup>89</sup> {MPS-0738584/32} at §137.

<sup>90</sup> {MPS-0745773/16} at §75. Note that HN299/342 says that the reports from his Marxist class and the North London Claimant’s union are missing from his witness pack.

<sup>91</sup> HN340 {MPS-0740414/18} at §56; HN348 {MPS-0741698/26} at §61; HN330 {MPS-0740328/8} at §19; HN336 {MPS-0739316/1} at §66; {MPS-0742282/28}; {MPS- 0746258/28,50}

<sup>92</sup> {MPS-0740968/22} at §76).

<sup>93</sup> {MPS-0739804/5} at §20.

<sup>94</sup> HN348 {MPS-0741698/26} at §61.

<sup>95</sup> {MPS-0738584/39} at §164.

<sup>96</sup> {UCPI0000021047}.

<sup>97</sup> {UCPI0000006850}.

<sup>98</sup> T1P4 {MPS-0748061/21}.

him and confide in him as they would any other friend<sup>99</sup>. HN354 said that he was treasurer of SWP and this was “*fantastic for information and intelligence gathering*”<sup>100</sup>. He estimated that in Walthamstow he had visited the homes of “*almost everyone of those that [he] would call active and a fair number of those who had been active or at least signed up*”<sup>101</sup>. and he visited three quarters of the members of the Leyton and Leytonstone branch at home<sup>102</sup>.

**c) Private information recorded in police files and shared with MI5**

56. UCOs gathered and reported all information indiscriminately without any review for privacy and relevance<sup>103</sup>:

- (1) They collected an extensive range of personal information including individuals’ sexual orientation<sup>104</sup>, personal relationships<sup>105</sup>, home addresses<sup>106</sup>, and living arrangements<sup>107</sup>, employment<sup>108</sup>, bank details<sup>109</sup>, car registration<sup>110</sup>, and even their state of health<sup>111</sup>. One officer reported that a woman had given birth to her first child and the name of the baby<sup>112</sup>.
- (2) They recorded identifying details about individuals including their physical description, personal characteristics, political inclinations and memberships of political organisations<sup>113</sup>.
- (3) One report listed 229 people who were identified as attending the Anti-Nazi League Carnival on 30 April 1978<sup>114</sup>.

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<sup>99</sup> T1P4 {MPS-0748061/21}.

<sup>100</sup> HN354 {MPS-0744903/25} at §119

<sup>101</sup> HN354 T1P2 {Day14/191:5-23}.

<sup>102</sup> HN354 T1P2 {Day14/192:20-25}.

<sup>103</sup> For Example: HN351 {MPS-0740332/8} at §31; HN348 {MPS-0741698/15}; HN329 {MPS-0738576/31}; HN106 {MPS-0745735/15} at §45; HN354 {MPS-0744903/31} at §147. HN353 {MPS-0740413/16} at §40. HN336 {MPS-0739316/34} at §152.

<sup>104</sup> {UCIP0000010996}; {UCPI0000007693}.

<sup>105</sup> For example: {UCPI0000017523}. {UCPI0000011809}; {UCPI0000017640}. {UCPI0000011289}; {UCPI0000018103}; {UCPI0000010931}.

<sup>106</sup> {UCPI0000011210}.

<sup>107</sup> {UCPI00000175115}.

<sup>108</sup> {UCPI0000010568}; {UCPI0000017439}. {UCPI000001162}. {UCPI0000011550}.

<sup>109</sup> For example {UCPI0000011681}; {UCPI0000011680}. {UCPI0000011389}; {UCPI0000017032}.

<sup>110</sup> {UCPI0000010968}.

<sup>111</sup> For example {UCPI0000013873}; { UCPI0000011924}; {UCPI0000013873}

<sup>112</sup> {UCPI0000010969}.

<sup>113</sup> For example: {UCPI0000017439}; {UCPI0000017459}; {UCPI0000017453}; {UCPI0000017540}; {UCPI0000017575}; {UCPI0000011140}; {UCPI0000010940}; {UCPI0000010968}; {UCPI0000010995}; {UCPI0000011181}; {UCPI0000011193}; {UCPI0000018134}; {UCPI0000011771}; {UCPI0000015145}.

<sup>114</sup> {UCPI0000021653}. {UCPI0000012890}.

57. UCOs described it as their role to gather information and for senior managers to identify what was relevant and what wasn't<sup>115</sup>. SDS managers did not provide any feedback or guidance on the level of detail to include in reports.<sup>116</sup> Managers and officers suggested that a reason for reporting personal information was that it would be of interest to the Security Service<sup>117</sup>:

- (1) *"The interpersonal relationships within the groups that were being monitored were of interest to Special Branch. That sort of information was passed to the Security Service. I do not think Special Branch itself did anything with the information other than file it away"*<sup>118</sup>.
- (2) *"Perhaps the reason I did get good feedback was that I went further than our brief, for violent disorder and reported on some other things that the Security Service were pleased about"*<sup>119</sup>.
- (3) Geoffrey Craft confirmed that Special Branch was gathering information for the Security Service on subversion and said because Security Service would make a request for information about individuals usually *"somebody would then have to go out on enquiries to discover who these people were. Now if we were feeding information in in advance then it saved an awful lot of time"*<sup>120</sup>.
- (4) A minute sheet dated 23 March 1967 records that MI5 were interested in evidence of an individual's membership in an organisation, address and occupation which was distinct from the MPSB's interest in that person's mode of life and proclivity to violence<sup>121</sup>.

#### **d) Common law and human rights of individuals not considered**

58. The Home Office, the MPS or the SDS do not appear to have considered, or if they did so it appears they disregarded, the lawfulness at common law of their operations, or whether they interfered with fundamental rights:

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<sup>115</sup> T1P1 {Day9/13:1-6}; T1P2 {Day5/94:1-13}; HN106 {MPS-0745735/16}; HN348 {UCPI0000014134}; HN45 {MPS-0741095/9} at §32.

<sup>116</sup> T1P1 {Day13/12:12-23}; T1P1 {Day13/13:14-25} HN351 {MPS-0740332/8} at §29; HN349 {MPS-0747546/41} at §143. {MPS-0746258/66} at §230; {MPS-0744903/24} at §112; {MPS-0747657/24}. {MPS-0741109/5}. {MPS-0738584/18} {MPS-0745772/65} at §316.

<sup>117</sup> HN351 {MPS-0740332/17} at §68; HN354 {MPS-0744903/25} at §115; HN126 T1P2 {Day15/137:23} - {Day15/138:3}.

<sup>118</sup> HN299/ 342 {MPS-0745773/27} at §131.

<sup>119</sup> {MPS-0747158/19} at §59

<sup>120</sup> Craft T1P3 {Day8/111:1-17},

<sup>121</sup> {MPS-0748352/2}.

- (1) Barry Moss and Geoffrey Craft said that it did not occur to them that the SDS operations were unlawful<sup>122</sup>. They did not consider whether it was lawful to deploy undercover officers into people's homes nor the limits of undercover officers powers of entry and seizure of confidential information<sup>123</sup>.
- (2) Trevor Butler similarly said that he was aware of the limits on police powers to enter private premises and to confidential information but he did not consider how this applied to the work of the SDS whilst undercover<sup>124</sup>.
- (3) Angus McIntosh said that it was "*a general policing rule*" that "*providing they were there and invited into the premises, there wasn't a problem*" with undercover officers powers of entry, search and seizure<sup>125</sup>. He said "*it couldn't be construed any other way purely because they couldn't stop at a door and suddenly turn around and say, 'I can't go in there', and it would have jeopardised their cover*"<sup>126</sup>.
- (4) Derek Brice confirmed that he was familiar with the limits on police officer's powers of entry, search and seizure<sup>127</sup>. However, when he was asked whether he considered the limitations of police powers as they applied to SDS operations, he said "*I have no comment to make on that, I'm sorry*"<sup>128</sup>.
- (5) Roy Creamer said that before he joined the SDS "*in those days, if you were sent to cover a meeting and it was in a private home, you should and you could for example go back to the yard and say, 'No, I can't get in there because it's a private house'; not merely could but you should*"<sup>129</sup> although he said that some managers would "*be very annoyed with you*" ...the "*official line was, 'No, way, you don't go – you don't go in'*"<sup>130</sup>.
- (6) None of the managers received any training on how police powers applied to undercover policing nor on the European Convention on Human Rights and Discrimination Act<sup>131</sup>.

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<sup>122</sup> Moss T1P3 {Day5/177:7}-{Day5/179:8}; Craft T1P3 {Day8/63:18}-{Day8/64:1}

<sup>123</sup> Moss T1P3 {Day5/34:19}-{Day5/37:18}; {Day5/40:12-23};

<sup>124</sup> Butler T1P3 {Day10/27:12}-{Day10/29:9}.

<sup>125</sup> McIntosh T1P3 {Day9/17:10-20}.

<sup>126</sup> McIntosh T1P3 {Day9/17:10-20}.

<sup>127</sup> Brice T1P3 {Day7/13:1-12}.

<sup>128</sup> Brice T1P3 {Day7/13:1-12}.

<sup>129</sup> Creamer T1P3 {Day6/132:8-23}

<sup>130</sup> Creamer T1P3 {Day6/132:8-23}.

<sup>131</sup> Butler T1P3 {Day10/27:12}-{Day10/29:9}. Craft {Day8/4:14-24}; Moss {Day5/35:6-14}; McIntosh {Day9/28:8-19}.

### e) Secrecy of SDS prioritised

59. Secrecy was at the heart of SDS operations and was prioritised over lawfulness, honesty to the courts, and the rights of the public. The SDS Annual Reports thus said “...security has been of paramount importance, not only to prevent embarrassment to the Commissioner should any leakage of our activities occur, but also to protect the field officers themselves”<sup>132</sup> and “security of the operation is an ever-present concern because a slip in this area could not only endanger the future of the Squad....”<sup>133</sup>.

60. Thus:

- (1) Any prospect of compromise was responded to immediately by SDS managers and escalated to senior Special Branch management. When HN45 was recognised by an activist, Ethel, the Head of Special Branch, Vic Gilbert and Deputy Commissioner Roland Watts visited him the following day or soon after<sup>134</sup>. Two other UCOs, were withdrawn at the same time as a safety precaution.<sup>135</sup>
- (2) SDS used deceased children’s identities to create cover identities without any consideration about the lawfulness of this practice<sup>136</sup>, nor the impact on the families of the children because they “*didn’t realise at the time that families of the deceased children would learn of the system and be distressed by it.*”<sup>137</sup> Geoffrey Craft said the SDS was a “*top secret operation and it seemed to be inconceivable that any of those would – would reveal it, and therefore the parents of a child – a deceased child should never, in fact, know about it. That is hindsight*”<sup>138</sup>. Angus McIntosh objected to families learning of SDS practices of using deceased children’s identities saying “*I think it’s most unfortunate that this Inquiry has enabled the poor families and relatives to realise that this happened. In normal circumstances, it wouldn’t have happened. I mean, it’s extraordinary*”<sup>139</sup>.
- (3) SDS refused to disclose UCOs status during court proceedings to avoid compromising the unit at the cost of misleading the court and resulting in

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<sup>132</sup> SDS 1975 Annual Report {MPS-0730099/4}; SDS 1977 Annual Report {MPS-0728981/7}; SDS 1978 {MPS-0728964/11};

<sup>133</sup> SDS 1980 Annual Report {MPS-0728962/6}.

<sup>134</sup> {MPS-0741095/22}.

<sup>135</sup> {MPS-0741698/41} at §107.

<sup>136</sup> Moss T1P3 {Day5/63}.

<sup>137</sup> Butler T1P3 {Day10/41:20-23}; Craft T1P3 {Day8/21}.

<sup>138</sup> Craft T1P3 {Day8/21:4-11}.

<sup>139</sup> McIntosh T1P3 {Day5/61:15-19}.

wrongful convictions. David Smith said that it was “*inevitable that occasionally an officer would be arrested..*” and they could not admit that an officer was undercover or the “*squad wouldn’t exist. It was ...for the greater good, as it were...*”<sup>140</sup>. When SDS officers were arrested they did not disclose that they were undercover and effectively misled the courts<sup>141</sup>. In “Michael Scott’s” case the decision for him to maintain his cover during court proceedings was approved by the Deputy Assistant Commissioner and Commander<sup>142</sup>.

- (4) Managers were unlikely to bring disciplinary proceedings against an undercover officer to avoid exposing the SDS because of their rights at disciplinary hearings<sup>143</sup>. This later became known as “*‘playing the SDS card’ which basically denotes a current or former SDS officer who seeks to extricate himself from disciplinary and/or criminal proceedings by claiming he was adversely affected by his experience as an undercover police officer...*”<sup>144</sup>.

61. SDS officers and managers were expected to preserve the confidentiality of the unit long after they left. Undercover officers who broke the ‘code’ of secrecy were ostracised.

- (1) Trevor Butler said that there was a “*need to know culture that was prevalent in the Branch throughout [his] time there....In that context, I found the SDS contribution to the ‘True Spies’ programme astounding. It was an earth shattering breach of the ‘need to know’ principle and I know that some long-standing friendships have been destroyed as a result*”<sup>145</sup>.
- (2) HN336 who spoke out on True Spies about the SDS “*lost a number of friends as a result of [his] participation in True Spies. Some have accused me of creating the demise of Special Branch in London.*”<sup>146</sup> Angus McIntosh was a good friend and a supervisor in the SDS and refused to speak to HN336 after the tv programme was aired<sup>147</sup>.

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<sup>140</sup> Smith T1P3 {Day6/103:6}-{Day6/106:25}.

<sup>141</sup> {MPS-0746258/27-28}; {MPS-0526782/1} and {MPS-0526782/2}; {MPS-0736910/19:}; {MPS-0747546/11}

<sup>142</sup> {MPS-0526782/1} and {MPS0526782/2}.

<sup>143</sup> Craft/ HN34 T1P3 {Day8/24:16}-{Day8/25:16}; McIntosh T1P3 {Day9/89:21-25}; see also Bob Lambert SDS Discussion Paper {MPS-0726956}

<sup>144</sup> {MPS-0726956/50}

<sup>145</sup> HN307 {MPS-0747658/5}.

<sup>146</sup> HN336 {MPS-0739316/24}.

<sup>147</sup> HN336 {MPS-0739316/24}.

- (3) “Paul Gray” in reference to True Spies said that he was “*extremely angry that senior officers thought it was appropriate to allow disclosure of how [they] did [their] jobs*”<sup>148</sup>.

**f) No safeguards or controls on the use of secret powers**

62. There was no focused targeting of organisations based on pre-existing assessments of threat posed by those organisation, and often UCOs were required to “*use their own initiative*” to identify a target group themselves<sup>149</sup>. UCOs explained variously:

- (1) I was “*given a fair bit of free rein ...to find a group to focus on*” but the ultimate choice was approved by management who had responsibility for tasking<sup>150</sup>.
- (2) “*there was not really any tasking in my deployment, we were really just required to go out and mix with people in these groups and report back*”<sup>151</sup>.
- (3) Tasking was to “*go to an area of London which had not had any SDS cover for some time. I was asked to observe and then become involved in an active subversive group....*”<sup>152</sup>.
- (4) They were not tasked “*as such*” but target groups were a collaborative decision with SDS managers<sup>153</sup>.
- (5) “*my initial tasking was to join the IS as HN343 was leaving the field*”<sup>154</sup>.

63. UCOs were not tasked to obtain specific information or intelligence about their target groups:

- (1) Tasking was “*broad-brush*”<sup>155</sup> and “*organic*”<sup>156</sup>.
- (2) A UCO would “*report anything that took place at the meeting*” and who attended<sup>157</sup>.
- (3) The “*fundamental difference between Special Branch work and the SDS*” was that on the SDS “*you sorted out your own tasking under supervision with a view to achieving an objective*”<sup>158</sup>.

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<sup>148</sup> HN126 {MPS-0740761/85}.

<sup>149</sup> {MPS-0738584/15} at §62.

<sup>150</sup> {MPS-0745735/15} at §41; {MPS-0740332/8} at §28.

<sup>151</sup> {MPS-0747158/13}.

<sup>152</sup> {MPS-0744903/15} at §68.

<sup>153</sup> {MPS-0742600/10} at §32.

<sup>154</sup> {MPS-0740968/10} at §39.

<sup>155</sup> Harvey T1P3 {Day14/19}-{Day14/15:4}.

<sup>156</sup> {MPS-0738576/12} at §57.

<sup>157</sup> {MPS-0738576/12} at §57.

<sup>158</sup> {MPS-0740354/14} at §34.

- (4) They were not “tasked beyond being told to infiltrate the SWP. My tasking was never more specific than that”<sup>159</sup>. “...you were just asked to go to an area and get settled. It was very relaxed. The pressure was not on”<sup>160</sup>.
- (5) Tasking was to infiltrate the SWP “beyond that I was left to my own initiative”<sup>161</sup>.
- (6) The “general understanding” of what he had to do was find out what his target group “were planning and what their membership was and then to report that back”<sup>162</sup>.
- (7) HN80 said that his tasking was to “gather the best information on extreme left-wing activists and groups...” in order to “assist the MPS to deal with demonstrations and the Security Service in its counter-subversion role.” He was not told to join the SWP but “used [his] initiative” to find information<sup>163</sup>.
- (8) They had “considerable discretion as to what [he] reported on during [his] deployment with sensible parameters”<sup>164</sup>.

64. There was confusion about who (if anyone) was responsible for such targeting and tasking, with a range of possibilities suggested including the individual UCOs themselves<sup>165</sup>, SDS managers<sup>166</sup>, senior officers at the level of Chief Superintendent of S Squad and C Squad in Special Branch<sup>167</sup>, and the Security Service<sup>168</sup>. Barry Moss said that tasking was led by the needs of Special Branch and C-Squad<sup>169</sup>. While Roy Creamer said that C Squad had no influence over the tasking of SDS undercover officers<sup>170</sup>.

65. The surveillance of an organisation did not cease when the information sought was obtained or when it became apparent that it would not be obtained. For example:

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<sup>159</sup> {MPS-0740761/31} at §10.

<sup>160</sup> {MPS-0740761/32} at §114.

<sup>161</sup> {MPS-0747546/13} at §45.

<sup>162</sup> Closed Officers Gist {UCPI0000034307/6} at §28.

<sup>163</sup> HN80 {UCPI0000033626/13} at §36-37.

<sup>164</sup> {MPS-0739804/20}.

<sup>165</sup> Barry Moss {MPS-0747797/12}; HN218 {MPS-07403554/10-13}; Trevor Butler {MPS-0747658/18}; Richard Walker {MPS-0747527/6}.

<sup>166</sup> Barry Moss {MPS-0747797/30} at §44.

<sup>167</sup> Geoffrey Craft {MPS-0748041/16}; HN34 {MPS-0747446/11}; McIntosh T1P3 {Day9/36:7}. {MPS-0747578/13} at §39.

<sup>168</sup> David Smith {MPS-0747443/10, 33}; David Bicknell {MPS-0726608/6}; Angus McIntosh {MPS-0747578/18}; Barry Moss {MPS-0747797/18}.

<sup>169</sup> Moss {MPS-0747797/30} at §44.

<sup>170</sup> Creamer T1P3 {Day6/196:1-6}.

- (1) "When there were quieter periods for SDS officers, I assume that intelligence reports were put in their name to justify their continued deployment."<sup>171</sup>
- (2) "Sandra" was tasked to "make contact with the women's liberation movement" but was only directed to attend the Women's Liberation Front after receiving an invitation to their meetings. She said "it was not until the SDS got involved that we knew if it was worthwhile to infiltrate a group." She didn't think her work yielded good intelligence but it "eliminated the WLF from public order concerns"<sup>172</sup>. She was not withdrawn nor were her target organisations changed when it became apparent that they were no longer a threat.
- (3) "Graham Coates" was tasked to "connect with the International Socialists in Hackney"<sup>173</sup>. His tasking changed from the socialists to the Anarchists because he found IS "very dull" and was "more interested" in the anarchists.<sup>174</sup> His managers agreed to the change.
- (4) UCOs continued to infiltrate organisations even where there was no threat to public order or subversion because they "could be" a threat to public order<sup>175</sup>.

66. There was no review of the necessity for deployments either before or during the deployment<sup>176</sup>.

- (1) Barry Moss said he would have liked to review deployments because there was "too much coverage of the SWP" but with the SDS "you cannot just easily move people around once they're well entrenched." He said it was a matter of waiting until someone left and "backfiling that vacancy."<sup>177</sup> The only option was to remove someone altogether<sup>178</sup>. He did not consider this an option.
- (2) Trevor Butler said that he did not recall reviewing the deployments but "they seemed to satisfy the criteria that was required."<sup>179</sup> He did not clarify which criteria he had in mind.

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<sup>171</sup> HN326 {MPS-0738584/52} at §229.

<sup>172</sup> {MPS-0741698/15} at §34.

<sup>173</sup> {MPS-0742282/16} at §49.

<sup>174</sup> {MPS-0742282/17} at §55-56.

<sup>175</sup> Craft T1P3 {Day5/106:22}-{Day5/107:2}.

<sup>176</sup> Butler T1P3 {Day10/37:19-25}; T1P3 {Day10/58:17-20}; Moss T1P3 {Day5/57:16-25}; Craft T1P3 {Day8/13:6-8}.

<sup>177</sup> Moss T1P3 {Day5/58:1-14}.

<sup>178</sup> Moss T1P3 {Day5/69:13-20}.

<sup>179</sup> Butler T1P3 {Day10/58:17-20}.

- (3) Only Geoffrey Craft said that “*there was continuing review of every individual deployment*” but admitted that “*there wasn’t a specific review*”<sup>180</sup>.

67. Although the ostensible purpose of SDS intelligence gathering was to obtain intelligence about public order and subversion, intelligence gathering and reporting was not confined to these issues and there was widespread confusion about the purpose of SDS operations.

- (1) The SDS reported additional benefits of gathering “*general information*” about persons who participate in the organisations. The general information served to “*short-circuit enquiries*” which would have been too “*time consuming and difficult to answer*”<sup>181</sup>.
- (2) Some organisations were targeted which did not pose an obvious threat to public order “*to provide ‘cover’ for SOS officers and sometimes a vehicle for the penetration of ad hoc ‘umbrella’ organisations*”<sup>182</sup>. The WRP which was not considered a “*threat to law and order*” but was used for an SDS officer to develop his “*credentials*”<sup>183</sup>.
- (3) UCOs reported on lawful activities of target organisations including participation in conferences<sup>184</sup>, Marxist study classes<sup>185</sup>, and social events.
- (4) SDS received *ad hoc* targeting requests from C Squad and Security Services for information about individuals which was not related to public order<sup>186</sup>. David Smith said that targeting requests from C Squad for identification of an individual did not assist the Special Branch with public order but helped Special Branch and Security Service have a general picture of the organisation or individual<sup>187</sup>.

68. Information gathered was retained and reported without any review for relevance by the SDS (see further at §§56-57):

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<sup>180</sup> Craft T1P3 {Day8/30:17-23}.

<sup>181</sup> 1971 SDS Annual Report {MPS-0728971/3}

<sup>182</sup> 1970 SDS Annual Report {MPS-0728972/2}

<sup>183</sup> {UCPI0000030893}.

<sup>184</sup> {UCPI0000021661}. {UCPI000002104}; {UCPI0000016366}; {MPS-0729094/2}

<sup>185</sup> {MPS-0745773/16} at §75. Note that HN299/342 says that the reports from his Marxist class and the North London Claimant’s union are missing from his witness pack.

<sup>186</sup> {UCPI00030893}

<sup>187</sup> Smith T1P3 {Day6/53:5}-{Day6/54:11}.

- (1) "Graham Coates" said "no scrap of information was ever rejected as irrelevant..." and "It was standard for all Special Branch reports to submit as much information as you could."<sup>188</sup> ... "the general ethos was that any information that is collected – however it's collected .... Even if it appears trivial or totally from left field and irrelevant...you can't really be afforded the option of ignoring it, in case in months, weeks, months, years to come it is the missing piece in a jigsaw."<sup>189</sup> This was the "point of view of Special Branch reporting generally..."<sup>190</sup>.
- (2) HN349 confirmed that "We were supposed to get as much information as we could and were not really told to filter it. This is how it worked for ordinary Special Branch officers as well"<sup>191</sup>.
- (3) "Peter Fredericks" described a different approach when he was working undercover in street crime before he joined the SDS. "Peter Fredericks" said "... the approach to gathering intelligence differed in the SDS when compared to what I was used to [redaction]. At [redaction] I did not report every small detail but rather I would wait and report back anything that struck me as out of the ordinary. That was not the way of the SDS: they reported most things"<sup>192</sup>.

**g) There was no guidance or training**

69. UCOs did not receive any training or guidance before being deployed and were expected to "learn on the job"<sup>193</sup> and to "play it by ear"<sup>194</sup>. Senior managers were not involved<sup>195</sup>. Officers learnt from other UCOs or through conversations in the back office<sup>196</sup>:

- (1) UCOs "were operating on your own, at the time we were all self-taught and lived on our wits. We would however, verbally share our experiences with each other"<sup>197</sup>.

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<sup>188</sup> HN304 {MPS-0742282/16} at §51

<sup>189</sup> T1P2 {Day12/58:5-13}

<sup>190</sup> T1P2 {Day12/58:5-13}

<sup>191</sup> {MPS-0740356/9} at §31 and see also §35.

<sup>192</sup> {MPS-0742282/5} at § 16.

<sup>193</sup> HN322 {MPS-0740351/7} at §32; HN326 {MPS-0738584/7} at §22; HN329 {MPS-0738576/5} at §19; §hn330 {MPS-0740328/6} at §12; HN333 {MPS-0740329/5} at §16; HN334 {MPS-074625/7} at §22; HN298 {MPS-0746258/4} at §13.

<sup>194</sup> HN340 {MPS-0740414/6} at §16.

<sup>195</sup> Craft {MPS-0748041/5} at §8.

<sup>196</sup> HN126 {MPS-0740761/7} at §22; HN155 {MPS-0747546/5}. HN301 {MPS-0742600/4} at §12; HN351 {MPS-0740332/4} at §10; HN354 {MPS-0744903/5} at §18.

<sup>197</sup> HN321 {MPS-0747158/6 } at §14.

- (2) *"I learnt a lot from officers that were already in the field."* and the officer he was replacing *"gave [him] advice on how to conduct myself when I went undercover."*<sup>198</sup>
- (3) *"we received informal training while working in the SDS back office"*<sup>199</sup>.
- (4) *"...I gained a lot from listening to the other UCOs talk"*<sup>200</sup>.
- (5) *"there was no formal training just loose and unwritten guidelines"* and *"Everything was very informal and we were expected to take information in through the skin. I found that strange in many ways..."*<sup>201</sup>.

70. As an example of this approach, some officers may have been shown a black folder in the SDS back office which contained tradecraft advice from undercover officers:

- (1) *"...it was quite a large folder and it consisted of lots of not reports but they were notations from previous officers going back to the start of SDS about tradecraft basically, what is now known as tradecraft.."*<sup>202</sup>.
- (2) *"...it was something that I was referred to and that I read"*<sup>203</sup>.
- (3) Angus McIntosh confirmed it existed but could not *"remember specific contents"*<sup>204</sup>. He was aware of it during his service with SDS between 1976 to 1979. He *"presumed it would be tradecraft advice"* and said he was *"almost certain that everyone looked at it once it was created because it was full of good advice for new officers"*<sup>205</sup>.

71. Managers and back office staff equally did not receive any guidance or training<sup>206</sup>:

- (1) Geoffrey Craft said that *"it was all on the spot and on the job learning, such as seeing what people were doing, how it was done, and reading old reports"*<sup>207</sup>.
- (2) Angus McIntosh said that *"in those days, you were normally taught by someone 'on the job' when you went to a new role. The Detective Chief Inspector at the time would have been my mentor but I do not remember working with Geoff Craft.... Mike Ferguson trained me informally when I joined"*<sup>208</sup>.

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<sup>198</sup> HN96 {MPS-0745772/5} at §23-29.

<sup>199</sup> HN106 {MPS-0745735/4} at §11.

<sup>200</sup> HN200 {MPS-0740968/5} at §17.

<sup>201</sup> HN304 {MPS-0742282/4} at §14.

<sup>202</sup> T1P4 {MPS-0748062/3}.

<sup>203</sup> T1P4 {MPS-0748064/2}.

<sup>204</sup> T1P3 {Day6/21:19-25}.

<sup>205</sup> McIntosh T1P3 {Day9/22:10-24}.

<sup>206</sup> Smith {MPS-0747443/6} at §13; Moss {MPS-0747797/8} at §19-20; Scully {MPS-0747155/9} at §23; Greenslade {MPS-0747760/6} at §16-17; Furner {MPS-0747104/5} at §14; Brice {MPS-0747802/10} at §24.

<sup>207</sup> Craft {MPS-0747446/7} at §19.

<sup>208</sup> McIntosh {MPS-0747578/8} at §23.

(3) Roy Creamer said that it was difficult to say whether there was subsequent training or advice as the Superintendent would “*tell you what he wanted and what he did not want. This was roughly all the instructions you got. There was an expression in the Branch: “do your best lad and we will back you up.” That is why they tried to choose people for the SDS who had intelligence and initiative, more than the average constable*”<sup>209</sup>.

**h) There was no adequate review of the SDS**

72. The purported objective of the SDS was to provide “*accurate intelligence in the field of public order so that the correct number of police shall be in the right place.*”<sup>210</sup> Barry Moss and other managers<sup>211</sup> stated that the purpose for extensive gathering of personal information was to ensure the efficient allocation of police resources; he said it “*enabled a suitable number of officers to be deployed or assisted in enabling policing in a given circumstances thereby avoiding the waste of public money or insufficient policing*’.<sup>212</sup> The secondary aim of the SDS was to obtain information “*regarding subversive organisations” which is passed to other Special Branch squads and Security Service.*”<sup>213</sup>

73. Geoffrey Craft could not say that there was any consideration of whether the level of intrusion from SDS deployments was proportionate to the value of the intelligence gathered<sup>214</sup>.

74. There was no proper review of whether there was a need for the SDS:

(1) The SDS was created to gather intelligence about left wing organisations organising the Vietnam Solidarity Campaign in October 1968<sup>215</sup>. The SDS was formed with a specific targeted remit and intended to conclude their operations after the 27 October 1968 demonstration. Sir James Waddell authorised the continuation of the SDS on 13 December 1968 as long as its existence was kept “*under review*” because he did not think it should be a

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<sup>209</sup> Creamer {MPS-0747215/13} at §28.

<sup>210</sup> 1969 SDS Annual Report {MPS-0728973}

<sup>211</sup> Smith {MPS-0747443/9-10}; Bicknell {MPS-0726608/4}; Craft {MPS-0747446/58}; McIntosh {MPS-0747578/29-30,70-71}; Richard Scully HN2152 {MPS-0747155/25}; Croydon HN350 {MPS-0747192/15}; Butler {MPS-0747658/40}; Moss {MPS-0747797/56}; Smith {MPS-0747443/28}; Skey {MPS-0747952/49}.

<sup>212</sup> Moss {MPS-0747797/56} at §103; Smith {MPS-0747443/3}; see also Greenslade {MPS-0747760/42,22}; {MPS-0730745}; Scully {MPS-0747155/7}.

<sup>213</sup> 1975 SDS Annual Report {MPS-0730099/1}; HN343 {MPS-0739804/31}

<sup>214</sup> Craft T1P3 {Day8/30:12-23}.

<sup>215</sup> {MPS-0724120}; {MPS-0730219}.

*“permanent feature of the Branch”*<sup>216</sup> It was agreed the next six months would provide an indication as to whether it was *“worthwhile”* to continue the SDS<sup>217</sup>.

- (2) Six months later, in June 1969, the Home Office authorised the continuation of the SDS<sup>218</sup> even though Assistant Commissioner Brodie confirmed that there was a *“lessening of violence which characterised political demonstrations”* in the first 6 months of the SDS operations<sup>219</sup>. He justified the continuation of the SDS on the basis that it would be *“vastly more difficult”* to recreate the SDS if circumstances required it in a few months’ time<sup>220</sup>. He reported that the Commissioner and the Security Service supported the SDS’ continuation<sup>221</sup>.
- (3) Thereafter, annual requests for funding for the SDS were granted by the Home Office throughout the T1 period with no further interrogation of the justification nor necessity for the SDS<sup>222</sup>.
- (4) On 30 April 1974, Members of Parliament reported concerns to the Home Secretary that Special Branch was taking an interest in *“civil rights organisations, such as the National Council for Civil Liberties, and industrial organisations”* including by taking photographs of people at meetings and demonstrations and composing lists of names of those participating and the sharing of this information with employers<sup>223</sup>.
- (5) A few months later, the operations of the SDS were moved to the *“newly created”* S Squad and placed under the supervision of a Chief Superintendent and Superintendent in July 1974<sup>224</sup>. According to Derek Brice, Detective Inspector of the SDS in 1974, this transition did not affect the day to day operations of the SDS<sup>225</sup>. There was no evidence disclosed of the concerns raised on 30 April 1974 affecting the operations of the SDS and in April 1975, the Home Office granted funding for the SDS to continue their operations<sup>226</sup>.

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<sup>216</sup> {MPS-0724117/3}.

<sup>217</sup> {MPS-0724117/3}.

<sup>218</sup> {MPS-0724109/3}

<sup>219</sup> {MPS-0728973}.

<sup>220</sup> {MPS-0728973}.

<sup>221</sup> {MPS-0728973}.

<sup>222</sup> Authorisations were granted on 21 December 1970 {{MPS-0724130/3}; 21 December 1971 {MPS-0724177/3}; 9 April 1973 {MPS-0724161/3}; 3 April 1974 {MPS-0724156/3}; 11 March 1975 {MPS-0730676}; 9 April 1976 {MPS-0730742}; 13 May 1977 {MPS-0730718}; 4 April 1978 {MPS-0730689}; 8 March 1979 {MPS-0728964}; 1 April 1980 {MPS-0728963}; 26 March 1981 {MPS-0731871}; 1 March 1982 {MPS-0728985}.

<sup>223</sup> {UCPI0000034700}.

<sup>224</sup> {MPS-0730906/8}.

<sup>225</sup> Brice T1P3 {Day7/78:2-23}.

<sup>226</sup> 11 March 1975 {MPS-0730676}.

- (6) The only formal review of the SDS was carried out in 1976 by a Working Party of Chief Superintendents R Wilson, HN332 and Chief Inspector Kneale and Detective Inspector Craft<sup>227</sup>. They recognised that *“the degree of violence associated with public demonstrations has declined since the formation of the Squad in 1968”* nonetheless, the Working Party approved the continuation of the SDS because their intelligence was considered useful to ensure *“adequate police coverage”* of demonstrations and because of their *“considerable”* contribution to the Security Services<sup>228</sup>.
- (7) On 27 July 1978, a file was opened titled *“Review of Special Branch Duties and liaison with the Security Service”*<sup>229</sup>. Minutes in the sheet recorded increased public scrutiny of Special Branch<sup>230</sup>. Following this the Home Office started work on revising the terms of reference of Special Branch and prepared a first revision on 1 November 1979<sup>231</sup>. There was no evidence of a review of the SDS objectives or modes of operations in the context of this review of Special Branch.
- (8) Work on the terms of reference which had paused in 1980 (the Security Service had objected to the revisions<sup>232</sup> whilst the MPSB<sup>233</sup> did not object) was restarted in 1983 after Sir Hayden Phillips, Home Office, expressed concern about *“the breadth and tone of, and market for”* a MPSB report on *“Political Extremism and the Campaign for Police Accountability within the Metropolitan Police District”*<sup>234</sup>
- (9) Senior management of the MPS held a different view and regarded the report as *“important”* and *“an excellent piece of work”* and that *“it is right that our senior officers should be briefed in order that they can adequately respond to criticism”*<sup>235</sup> It was in this context that the SDS continued to operate without any apparent review of their targets or methods of operations.

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<sup>227</sup> {MPS-0730745}.

<sup>228</sup> {MPS-0730745}.

<sup>229</sup> {UCPI0000035084}.

<sup>230</sup> {UCPI0000035084}.

<sup>231</sup> {UCPI0000004716}

<sup>232</sup> Letter dated 6 December 1979 from the Security Services to David Heaton said that there was no need to revise the terms of reference. {UCPI0000004426}; Sir Hayden Phillips said that work on the guidance/ revised terms of reference paused in late 1980 as the work reached a point which did not justify going forward given the *“reticence from the Security Service and HMIC”* {UCPI00000035282/32}.

<sup>233</sup> {UCPI0000035109}

<sup>234</sup> {UCPI0000035096}.

<sup>235</sup> {MPS-0748422/3}

(10) In April 1984, the Home Affairs Select Committee announced its intention to investigate the role and accountability of Special Branches. In June 1984, Sir Brian Cubbon asked Roy Harrington to make enquiries at the SDS. He was “concerned to know that the SDS could be defended as a current response to current problems and was not just something which had been allowed to drift on after having been set up for a specific purpose in 1968.”<sup>236</sup> Roy Harrington said that Sir Brian Cubbon may have requested him to discuss the SDS because of the impending work by the Home Affairs Select Committee.<sup>237</sup>

(11) On 16 July 1984, Roy Harrington wrote to Peter Phelan and said that Michael Partridge and Sir Brian Cubbon were content with the way the SDS “role has been adapted to changing circumstances and with the arrangements for liaison with the security Service.”<sup>238</sup>

(12) As CTI has explained in their Opening Statement for Module 2(a) and (b) at §99, in observations with which the Cat H CPs agree, this conclusion, and the process followed to reach it, is hard to defend.

#### IV. EVIDENCE ABOUT SEXUAL RELATIONSHIPS

##### A. Risk of sexual relationships

75. There was an obvious risk of UCOs in long-term deployments entering into sexual relationships.

76. Socialising with target groups was part of the job both in order to obtain further intelligence and to maintain cover<sup>239</sup>.

- (1) “It was a social scene as much as a political one”<sup>240</sup>.
- (2) This involved regular trips to the pub after meetings<sup>241</sup>,
- (3) It was necessary to live a “full alternative lifestyle”<sup>242</sup>.

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<sup>236</sup> {MPS-0737347/9}.

<sup>237</sup> {UCPI0000035341/36} at §80.

<sup>238</sup> {MPS-0734164}.

<sup>239</sup> McIntosh T1P3 {Day9/78}; HN80 {UCPI0000033626/3}; HN339 {MPS-0736910/13}; HN345 {MPS-0741109/21-22}; HN106 {MPS-0745735/18,44}; HN96 {MPS-0745772/14,23,26 }; HN351 {MPS-0740332/11}; HN304 {MPS-0742282/8}; HN126 {MPS-0740761/37,53}; HN343 {MPS-0739804/11}; HN336 {MPS-0739316/14}; HN155 Risk Assessment {MPS-0746346/1}; HN155 {MPS-0747546/34,35} HN333 {MPS-0740329/11}; Harvey {MPS-0744903/36}

<sup>240</sup> HN126 {MPS-0740761/53, 70}.

<sup>241</sup> HN 329 {MPS-0738576/43,54}; HN155 {MPS-0747546/15} at §50.

<sup>242</sup> HN155 Risk assessment fact check {MPS-0746710}.

77. The social scene involved sexual relationships, and the MPS knew that:

- (1) “[S]exual partners within the group seemed to be a part of the life of the group”<sup>243</sup>,
- (2) “Relationships amongst members of political groups were not uncommon....”<sup>244</sup>; on the contrary they were frequent<sup>245</sup>.
- (3) Infiltrated groups had “the ‘free love’ attitudes of the sixties and seventies”<sup>246</sup>.
- (4) There was “variety of sexual expression”<sup>247</sup>.
- (5) Senior officers and the Security Services were briefed on ‘social and sexual pressures’ within groups<sup>248</sup>, and the frequency of relationships<sup>249</sup>.

78. Deployments of between 3-5 years from 1974 onwards<sup>250</sup> meant sexual relationships would be expected of UCOs while undercover living ‘a full alternative lifestyle’<sup>251</sup> :

- (1) Without a girlfriend UCOs would face ‘questions about why a young man seemingly had no interest in women’<sup>252</sup>.
- (2) “..if you’ve been out in the field for some time and not had any relationships, people are inclined to wonder why”<sup>253</sup>.

79. The likelihood of a sexual relationship was increased due to the amount of time UCOs spent undercover:

- (1) Some UCOs worked seven days a week for 14 hours a day, spending more time undercover in their cover identity than in their own real identity<sup>254</sup>.

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<sup>243</sup> McIntosh {MPS-0747578/47} at §137.

<sup>244</sup> Moss at {MPS-0747797/39} §95 (b).

<sup>245</sup> HN106 {UCPI0000034280/3} at §9

<sup>246</sup> SDS Tradecraft Manual {MPS-0527597/24}.

<sup>247</sup> HN85 {UCPI0000029060/2} at §7

<sup>248</sup> {UCPI0000034280/3}.

<sup>249</sup> {UCPI0000029060/2}

<sup>250</sup> The initial short deployments were phased out. E.g. Barry Moss; David Fisher/ HN327; HN329; HN321/ (“William Paul Lewis”); HN330; HN333; HN336; HN348; HN349. See further evidence of longer deployments: 1976 SDS Annual Report at §12 {MPS-0728980/5}; HN13/ (“Desmond/Barry Loader”) deployed for 4 years; HN200/ (“Roger Harris”) deployed for 3 years; HN300/ (“Jim Pickford”) deployed for 2 years; HN351/ (“Jeff Slater”) deployed for 1 years; HN353/ (“Gary Roberts”) deployed for 4 years; HN296/ (“Geoff Wallace”) deployed for 3 years; HN304/ (“Graham Coates”) deployed for 4 years; HN354 (“Vince Miller”) deployed for 3 years; HN96/ (“Michael James”) deployed for 5 years.

<sup>251</sup> {MPS-0746346}

<sup>252</sup> HN106 {MPS-0745735/43} at §134.

<sup>253</sup> Harvey T1P2 {Day14/108:19}-{Day14/109:3}.

<sup>254</sup> HN354, Vince Harvey {MPS-0747657/18-20} at §§85-85 and 90.

- (2) *"I often spent a couple of weeks at a time at my cover address..."*<sup>255</sup> and UCOs could spend as long as 3 or more weeks undercover<sup>256</sup>.
- (3) There were occasions on deployment when *"it became unreal"* and *"you forgot about what your actual work was and you started to relax which is really dangerous"*<sup>257</sup>.

80. Some UCOs considered sexual relationships an expected part of the job: *"if you ask me to infiltrate some drug dealers, you can't point the finger at me if I sample the product. If these people are in a certain environment where it is necessary to engage that little more deeply, then, shall we say, I find this acceptable"*<sup>258</sup>.

81. Sexual relationships offered a significant tactical advantage for UCOs, and the SDS, both in terms of maintaining cover, and obtaining more information:

- (1) HN21's relationship was with one of a *"group of maybe four or five of us"* who went to lots of concerts and other activities<sup>259</sup>. Participating in this group was *"quite important to my cover."* It was enjoyable *"but for my cover it was really good"*<sup>260</sup>.
- (2) Richard Clark used sex as a way of consolidating his history and to *"cement his reputation. He was using it to get closer to us as a group of activists"*<sup>261</sup>, and it had the effect of allaying early suspicions about him in the tight-knit group<sup>262</sup>.
- (3) HN354 Vincent Harvey said of his relationship with 'Madeleine', that *"...it's a sign that you're living a normal – a more normal life"*<sup>263</sup> that it would *"dispel suspicion"* as *"it would fit that people would expect you to have some kind of relationship..."* that not having a relationship was *"somewhat unusual over a prolonged period for people in their late 20s"*<sup>264</sup> and that it discouraged advances from a gay man who was *"becoming persistent"*<sup>265</sup>.

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<sup>255</sup> HN155 {MPS-0747546/15} at §50.

<sup>256</sup> HN155 Initial Psychological assessment {UCPI0000034360/2}.

<sup>257</sup> HN21 T1P2 {MPS-0748062/12}.

<sup>258</sup> HN345 T1P1 {Day14/90:4-22}.

<sup>259</sup> HN21 T1P4 {MPS-0748062/8}

<sup>260</sup> HN21 T1P4 {MPS-0748062/8}

<sup>261</sup> Mary {UCPI0000034306/1}; {UCPI0000034181/}.

<sup>262</sup> Richard Chessum T1P2 {Day10/105:11} – {Day10/106:8}.

<sup>263</sup> Harvey T1P2 {Day14/108:19}-{Day14/109:3}.

<sup>264</sup> Harvey T1P2 {Day14/109:4-9}.

<sup>265</sup> Harvey T1P2 {Day14/109:18-24}.

(4) HN106 “Barry Tompkins” said “it was...helpful for my cover for people to think I had a girlfriend...”<sup>266</sup>.

(5) HN304 “Graham Coates” explained that an ‘individual in a sexual relationship with an activist is far more likely to be in a position to obtain valuable information...’<sup>267</sup>.

## B. Sexual relationships

82. Not only was there an obvious risk of sexual relationships in T1 but it is clear that deceitful sexual relationships between UCOs and members of the public did occur, although the full extent is not clear. The passage of time since the T1 period, the fact that some potential witnesses are deceased, and the powerful code which ‘enjoins officers to back each other up in the face of external examination’<sup>268</sup> means it is not possible for the Inquiry to be certain that it has a full picture of what occurred. The Cat H CPs submit the evidence is sufficient, however, to conclude that:

- (1) Sexual relationships had by the mid- 1970s become a regular feature of SDS undercover policing;
- (2) This was known about amongst UCOs and their managers;
- (3) Such relationships were regarded as an inevitable risk of the deployment, and unworthy of the attention of management, so long as the UCO handled himself properly, these relationships were casual, and they did not lead to compromise of the operations.

83. From the period prior to 1974, when deployments were shorter, UCOs have admitted to developing relationships with women, sometimes romantic, both during and after their deployment, although they did not admit they became sexual. Thus:

- (1) “John Graham” says he invited a girl from the Vietnam Solidarity Campaign (“VSC”), to dinner after his deployment ended.<sup>269</sup> Although he denied it was because of sexual temptation<sup>270</sup>, his suggestion it might have been to obtain information is implausible given he was no longer deployed.

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<sup>266</sup> HN106 ({MPS-0745735/43} at §134.

<sup>267</sup> Coates T1P2 {Day12/54:14-25}

<sup>268</sup> Reiner, *Politics of the Police*, 1985, p93

<sup>269</sup> HN329 {MPS-0738576/43-44}.

<sup>270</sup> T1P1 {Day9/48-49}

- (2) "Dick Epps" also had "a couple of drinks" with a woman who was a member of the Kentish Town Branch of the VSC<sup>271</sup> but claimed he met her only once on her invitation and it was an ordinary conversation from which they became "nodding acquaintances"<sup>272</sup>. He said that their meeting gave him credibility which helped him to be accepted into the 'tight knit' group<sup>273</sup>.
- (3) "Peter Fredericks", who had likened sexual relationships between UCOs and activists as 'sampling the product'<sup>274</sup>, admitted he went to a few restaurants with a woman he met at meetings about support for Bangladeshi people<sup>275</sup>. They sometimes met alone<sup>276</sup> and he "was hoping to obtain information from her..."<sup>277</sup> When asked if he did anything that might be perceived by her as romantic he said "No. Well, I'd rather not comment, but no is the answer"<sup>278</sup>.
- (4) "Peter Fredericks" also refers to following up on another female activist after his deployment ended, visiting the house in the area where she use to live<sup>279</sup>, although he claims his interest was not romantic, but he found she had died<sup>280</sup>.

84. The denial of any sexual relationship in this evidence ought to be treated with some caution for the following reasons:

- (1) None of the women mentioned by these UCOs have given evidence, either because they are deceased or have not been located, and the Inquiry thus only has one side of the story;
- (2) It is clear from the conflicting evidence of Vincent Harvey and 'Madeleine' that there is, at least, a possibility that UCOs will seek to minimise their conduct (see below).

85. Between 1974 to 1982, it is clear that several UCOs did have sexual relationships with women in their undercover identities. Once again, however, the available evidence is patchy because many of the women involved are either deceased or have not been

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<sup>271</sup> {MPS-0739316/14}; T1P1 {Day11/48-49}.

<sup>272</sup> HN336 T1P1 {Day11/49:14-24}.

<sup>273</sup> HN336 T1P1 {Day11/49:8-10}; {MPS-0739316/14}.

<sup>274</sup> HN345 T1P1 {Day14/90:4-22}.

<sup>275</sup> HN345 T1P1 {Day14/56-57:}; {MPS-0741109/25} at §61.

<sup>276</sup> HN345 T1P1 {Day14/57:1-7}

<sup>277</sup> HN345 T1P1 {Day14/57:22-24}; {MPS-0741109/25}.

<sup>278</sup> HN345 T1P1 {Day14/58:8-10}.

<sup>279</sup> HN345 T1P1 {Day14/60:12-16}; T1P1 {Day14/60:4-9}.

<sup>280</sup> T1P1 {Day14/59-60}.

contacted to give evidence, and equally many UCOs who could have given relevant evidence are dead<sup>281</sup>. Thus:

- (1) There is no dispute that **Vincent Harvey/HN354 (“Vince Miller”)** deployed from 1976 to 1979, had sexual relationships, because he has admitted four, all of which he claims were fleeting. One of those women has given evidence, Madeleine, and her evidence about the extent of the relationship differs sharply from his (see her Closing Statement §§23-34).
- (2) There is equally no dispute that **HN21** deployed in the late 1970s/ early 1980s had a sexual relationship, because he too has admitted to it. His original admission of two relationships has changed to one, however, and it is not possible to corroborate his account of the relationship or its extent, because the woman, or women, have not been contacted to give evidence.
- (3) **HN302** deployed in the late 1970s/ early 1980s has also admitted to a sexual relationship which he also claims was short-lived, but the woman involved has not been contacted to give evidence.
- (4) **HN155 (“Phil Cooper”)** deployed in 1979 to 1983 admitted ‘*dalliances*’ and ‘*liaisons*’ to his risk assessors, but has subsequently denied that he was admitting sexual relationships, claiming that his comments had been misinterpreted<sup>282</sup> and that the interviews were rushed<sup>283</sup>. The risk assessors have, in oral evidence, insisted their record of the interviews are accurate and that the interviews were not rushed<sup>284</sup>.
- (5) The evidence strongly suggests **Richard Clark HN297 (“Rick Gibson”)**, deceased, deployed from 1974 to 1976, had at least one and most likely several sexual relationships while undercover, since i) one of the women, Mary, has given evidence that she had a relationship with him <sup>285</sup> and also stated that her flatmate had a similar experience with him<sup>286</sup> ii) Richard Chessum’s evidence is that Richard Clark has sexual relationships with at least four women,<sup>287</sup> and

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<sup>281</sup> The following UCOs were deployed after 1974 and are deceased HN300; HN303; HN13; HN297; HN356/124; HN106. HN106 died after he gave a witness statement to the Inquiry but was unable to give oral evidence.

<sup>282</sup> HN155 {MPS-0747546/33} at §115.

<sup>283</sup> HN155 {MPS-0746378/3}

<sup>284</sup> David Reid {MPS-0746378/4-6}; T1P2 {Day16/212:3-13}; {Day16/227:15}-{Day16/229:25}; {Day16:238:2-6}; Brian Lockie T1P2{Day16/254:18-22}; {MPS-0747533/5};

<sup>285</sup> Mary {UCPI0000034306/1}; {UCPI0000034181/13}.

<sup>286</sup> Mary {UCPI0000034306/1}; {UCPI0000034181/}.

<sup>287</sup> Richard Chessum {UCPI0000034182/48}. That is four women within his knowledge. It is not known if there were more women he had a sexual relationship with in his cover identity.

- iii) other officers have also given evidence either that they heard about Rick having sexual relationships directly from him or that they heard rumours<sup>288</sup>.
- (6) There is also strong evidence that **HN300 (“Jim Pickford”)** deployed from 1974 to 1976 (also deceased) had a romantic, and probably sexual, relationship with an activist in his cover identity which led to his deployment being terminated, and to the end of his marriage (see evidence from another UCO<sup>289</sup>, and his ex-wife)<sup>290</sup>.
- (7) **HN106 (“Barry Tompkins”)** deployed from 1979 to 1983 was believed by the Security Services and SDS Managers to have ‘bedded’ one woman<sup>291</sup> and was thought by activists to be in a relationship with a second woman known as “Barry’s girlfriend”<sup>292</sup>. He denies being in a sexual relationship with either, but admits a very close personal relationship with his ‘girlfriend’<sup>293</sup>.
- (8) There is a dispute as to whether **HN126 (“Paul Gray”)** deployed from 1977 to 1982 had a sexual relationship with Ros Gardner (deceased), with her fellow activist Neil Hardie providing evidence suggesting that he did<sup>294</sup>, and “Paul Gray” denying it<sup>295</sup>.

86. The evidence about each of these eight UCOs conduct is addressed in more detail in the attached Annex to this Closing Statement, and in respect of HN354, Vince Harvey, in Madeleine’s Closing Statement. It is Cat H CP’s case that the evidence shows that between 1974-1982, out of a total of 23 UCOs, 5 of whom are deceased so they could not give evidence to the Inquiry<sup>296</sup>:

- (1) At least six UCOs had one or more sexual relationships with female members of the public in their undercover identity.

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<sup>288</sup> HN304, T1P2 {Day12/44:5-19}; T1P2 {Day12/44:5-19}; {UCPI0000034307/5}; Closed officers {MPS-0748061/45}; T1P4 {MPS-0748061/46}; Closed officers {MPS-0748061/61}; HN126 T1P2 {Day/57:2-18}

<sup>289</sup> Closed officers gist {UCPI0000034307/4}; T1P4 {MPS-0748061/46,49,53}

<sup>290</sup> HN300’s ex-wife {MPS-0747525/4}

<sup>291</sup> {UCPI0000027446};

<sup>292</sup> HN106 (“Barry Tompkins”) {MPS-0745735/42-43}

<sup>293</sup> HN106 (“Barry Tompkins”) {MPS-0745735/42-43}

<sup>294</sup> Hardie {UCPI0000035163/5} at §37-42.

<sup>295</sup> HN126 {MPS-0748266/8} at §9.

<sup>296</sup> Total number of UCOs are counted as 7 UCOs in closed plus HN356, HN303, HN297, HN155, HN126, HN106, HN80, HN96, HN354, HN304, HN296, HN353, HN351, HN300, HN200, HN13, HN20, HN301, HN298 and HN342/299.

- (2) Some of these relationships persisted over several months, were perceived as significant by the women involved, and one was so serious that it led to marriage and the UCO's deployment being terminated.
- (3) A further seventh UCO, Barry Tompkins had an intimate romantic relationship with a female member of the public which may well have been sexual and was perceived as serious by both the woman involved and their circle of acquaintances.
- (4) Given the lacunae in the evidential picture, namely the absence of evidence from some officers and many women, and the reluctance of fellow officers to implicate each other, it is not possible to be sure whether any of the remaining 16 UCOs, five of whom are dead, had sexual relationships with female members of the public, but it is likely that at least some of them did.

### C. Wider knowledge of sexual relationships

87. The Cat H CPs submit that it is clear from the evidence that in the T1 period:

- (1) The risk that UCOs would enter into sexual relationships with female members of the groups they were infiltrating was widely understood by UCOs and managers at the time.
- (2) It was also widely known that such relationships were likely to be taking place, even if UCOs and managers did not know about specific relationships.
- (3) Rick Clark's sexual relationships with women became the subject of widespread knowledge in the SDS after his undercover identity was exposed as false in 1976 and he had to be withdrawn from deployment.
- (4) A number of UCOs and managers also came to know about HN300/Jim Pickford's withdrawal from deployment in 1976 after he fell in love with a female member of the public whom he later married.

88. As to the risk of sexual relationships, not only is it obvious for all the reasons set out above, but a number of UCOs (see above at §§80-81, 83-85) and some managers (see below at §90) have acknowledged it in their evidence. As the PSI study demonstrates, sex, and the sexual exploits of police officers, were a topic of frequent conversation in a force which was at the time overwhelmingly male and dominated by a '*cult of masculinity*'. MPS Commissioner Sir Robert Marks' biography, furthermore, shows that any innovation which brought opportunities for police officers to interact

intimately with the opposite sex was the subject of ribald speculation at all levels of seniority (see *In the Office of Constable*, Sir Robert Mark, 1978, p. 61, p95, p231-2; e.g. “I was a bit worried at the prospect of 120 nubile young women at Hendon where the cadet school houses 500 young men....with a touch of the Valentines I enquired acidly if Henry had provided for a professional abortionist to be assigned a police house at Hendon or was it that recruiting was so bad that we now had to breed our own....”).

89. Against this backdrop it is inconceivable that the obvious risk was overlooked; on the contrary the only plausible scenario is that the possibility of sexual relationships with female members of the SDS’s target groups was the subject of discussion and probably ‘banter’.

90. Managers who have acknowledged knowing about the risk are:

(1) Superintendent David Bicknell (1974-1975) (deceased) in an interview to Operation Herne stated that the risk of undercover officers engaging in sexual relationships was anticipated when he supervised the SDS in 1974,<sup>297</sup> saying “The reason that married men were favoured is because it was considered there would be less temptation for them to enter into inappropriate relationships with women.”<sup>298</sup>

(2) Inspector Angus McIntosh (1976-1979) also stated that *the temptation of a sexual liaison undercover was a risk that was actively considered* <sup>299</sup>, that there were discussions within the SDS about “the issue of girlfriends”<sup>300</sup> and “that officers reported that it was difficult for an officer who was in a group for a long time to continue to decline advances without comment.”<sup>301</sup>

(3) Chief Inspector Trevor Butler (1979-81) said that he ‘might have considered that that was a possibility’ although he said that he ‘trusted all of them’.<sup>302</sup>

91. In addition to these acknowledgments, there is evidence that Chief Inspector Mike Ferguson (1978-1979) (deceased) also knew of the risk. First, an officer in closed recalled being asked by Mike Ferguson if there were any SDS officers having a sexual relationship<sup>303</sup>. The officer says he replied that he did not know and his colleagues

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<sup>297</sup> Bicknell {MPS-0726608/4}

<sup>298</sup> *ibid*

<sup>299</sup> McIntosh T1P3 {Day9/56:4-12}.

<sup>300</sup> McIntosh {MPS-0747578/47}

<sup>301</sup> McIntosh T1P3 {Day9/77:16-23}; McIntosh {MPS-0747578/47} at §37.

<sup>302</sup> Butler {Day10/78:1-3}

<sup>303</sup> {UCPI0000034307/5}.

would not tell him if they were<sup>304</sup>. Second, Angus McIntosh has confirmed that his Chief Inspector Mike Ferguson was party to the discussions about “*the issue of girlfriends*”<sup>305</sup>. Finally both Angus McIntosh and Geoffrey Craft admit awareness of jokes in the safehouse that would be of a sexual nature<sup>306</sup>.

92. Nor was the risk known only in the abstract.

93. In oral and written testimony “Graham Coates” (1976-1979) said that there were “*jokey remarks made in SDS meetings*” about sexual encounters with women whilst undercover<sup>307</sup>, including some of a gross kind, such as ‘*he’ll have made her bite the blankets again last night*’<sup>308</sup> and that jokes about Richard Clark (1974-1976) sexual activities were common in the safe house with SDS managers knowledge<sup>309</sup>. Those comments in the safehouse in the 1976 period when his deployment overlapped with Richard Clark left him “*in no doubt that the management were aware of that officer’s behaviour*”<sup>310</sup>. In oral evidence “Graham Coates” stated he was confident that the contemporary management of SDS Chief Inspector Derek Kneale (1974-1976), Inspector/Chief Inspector Geoffrey Craft (1974-1977) and Sergeant HN368 (1974-1978) were aware of jokes about Richard Clark’s sexual relationships<sup>311</sup>. He also believed Angus McIntosh would have been aware as he joined the SDS in 1976 shortly before Richard Clark was compromised<sup>312</sup>.

94. The Cat H CPs submit “Graham Coates” oral and written testimony is honest, candid, consistent and plausible, and in keeping with the findings of the contemporary PSI, *Police in Action* report. It is also supported by the following evidence:

- (1) Richard Clark openly boasted about his sexual exploits to other undercover officers<sup>313</sup>.
- (2) He had an established reputation as a womaniser<sup>314</sup>.

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<sup>304</sup> {UCPI0000034307/5}.

<sup>305</sup> McIntosh T1P3 {Day9/76:16}-{Day9/77:1}.

<sup>306</sup> Craft T1P3 {Day8/66:9-21}; McIntosh T1P2 {Day9/52}.

<sup>307</sup> HN304 {MPS-0742282/42}; T1P2 {Day12/36:9}-{Day12/37:12}-44}.

<sup>308</sup> HN304, T1P2 (Day 12/44:16-19)

<sup>309</sup> T1P2 {Day12/40:15} - {Day12/42:18}; {Day12/44:11-19}.

<sup>310</sup> HN304 T1P2 {Day12/40:19-23}. See also {MPS-0742282/42} at §146 b.

<sup>311</sup> HN304 T1P2 {Day12/41:8} - {Day12/42:2}

<sup>312</sup> HN304 T1P2 {Day12/41:15} - {Day12/42:2}.

<sup>313</sup> Closed officers {MPS-0748061/58}

<sup>314</sup> Closed officers {MPS-0748061/45, 47, 61}

- (3) An officer in closed has described how it became common knowledge that Richard Clark had engaged in sexual relationships leading to his compromise in 1976. When asked about managers knowledge he said “*I wouldn’t know if they knew or if it was just a rank and file thing. I should imagine that some of them did*”<sup>315</sup>.
- (4) When “Paul Gray” joined the SDS in October 1977<sup>316</sup>, he raised concerns about the use of a deceased child’s identity after Richard Clark’s compromise. He was reassured by SDS Management that he would not be compromised in a similar way because Rick Clark’s sexual relationships had led to his compromise<sup>317</sup>. The SDS DIs and DCIs in post in 1977 were Geoffrey Craft, Angus McIntosh and Kenneth Pryde, and amongst the managers, as Angus McIntosh accepted, there were “*No secrets professionally*”<sup>318</sup>.
- (5) The Richard Clark matter became infamous and was documented in the SDS Tradecraft Manual<sup>319</sup>. It is implausible that an event so notorious was known to UCOs but unknown to those managers who had to deal with the fall-out in real time.

95. In the same year as the Richard Clark matter, 1976, “Jim Pickford” (1974-1976) was also withdrawn from deployment early due to romantic involvement with a female member of the public. He had confessed to his UCO colleague that he had ‘*fallen in love,*’ that colleague reported the matter to the office and Angus McIntosh met the undercover officer in the pub<sup>320</sup>. The undercover officer said that Angus McIntosh then went to meet “Jim Pickford” who was withdrawn from the field in December 1976<sup>321</sup>. The premature withdrawal of “Jim Pickford” was the second significant withdrawal in the SDS within 3 months.

96. Minutes from a meeting between the Security Services and the SDS on 29 June 1981, confirm that Chief Inspector Dave Short (from 1981) was aware that “Barry Tompkins” “*had probably bedded*” an activist. At the time Geoffrey Craft was Chief Superintendent

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<sup>315</sup> Closed officers {MPS-0748061/61}

<sup>316</sup> {MPS-0730697}

<sup>317</sup> HN126 T1P2 {Day15/56-57}

<sup>318</sup> McIntosh T1P3 {Day9/60:2-4}.

<sup>319</sup> SDS Tradecraft Manual {MPS-0527597/8}.

<sup>320</sup> T1P4 {MPS-0748061/46-47}.

<sup>321</sup> T1P4 {MPS-0748061/48}.

of S Squad with responsibility for the SDS. On the day of the meeting, he was visiting the SDS for the Annual Report Interview. He attended lunch with drinks with David Short, HN68 and the Security Services after the meeting on 29 June 1981<sup>322</sup>. “Barry Tompkins” explanation of these minutes are that Inspector/Chief Inspector Trevor Butler (1979-1981) spoke to him about an intercepted telephone call when an activist (a different woman to that named in the Security Services note) was described as “*Barry’s Girlfriend*”<sup>323</sup>.

#### **D. Denials of knowledge**

97. Notwithstanding all this evidence several SDS Managers have denied that they were aware of the risk of sexual relationships, and/or denied that they were aware of the actual or suspected relationships of Richard Clark, “Jim Pickford” and “Barry Tompkins”.

98. Sergeant David Smith (1970-1974) said that “*nobody spoke about that as being a potential problem*” and it was only in 2013 or so that he became aware of the risk, although he now accepted that “*it obviously was a risk*”<sup>324</sup>.

99. Inspector Derek Brice (1973-74) said that sexual relationships were “*a possibility*” but he only considered it when he learnt of the relationships in the national press<sup>325</sup>.

100. Inspector/ Chief Inspector Geoffrey Craft (1974-1977)’s period as SDS manager was particularly long. In addition shortly afterwards he was in 1981 appointed Chief Superintendent of S Squad with responsibility for the SDS, a post he held until 1983. His tenure as SDS manager straddles Richard Clark and “Jim Pickford’s” entire deployment and their subsequent withdrawal, and he was Chief Superintendent at a time when SDS management and the Security Services believed “Barry Tompkins” had ‘*bedded*’ a activist<sup>326</sup>. Nonetheless:

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<sup>322</sup> {UCPI0000027446}; Geoffrey Craft was also responsible for organising the Security Service debrief with HN106 after his withdrawal indicating a significant degree of oversight of his deployment. {UCPI0000029219}

<sup>323</sup> HN106 {MPS-0745735/42}

<sup>324</sup> Smith T1P3 {Day6/95:20-25}.

<sup>325</sup> Brice T1P3 {Day7/63:6-14}.

<sup>326</sup> {UCPI0000027446}; Geoffrey Craft was also responsible for organising the Security Service debrief with HN106 after his withdrawal indicating a significant degree of oversight of his deployment. {UCPI0000029219}

- (1) He only accepts he was aware of a risk of sexual relationships in hindsight<sup>327</sup>. He claims that, *"It was a period of time when such activity was frowned upon by the Branch in particular, and probably the force overall, and it was assumed that nobody would be so stupid as to risk their career by doing it"*<sup>328</sup>.
- (2) He, in common with Angus McIntosh, denies knowledge of Richard Clark sexual relationships with women whilst undercover<sup>329</sup>.
- (3) He says that he *"did not remember being involved"* and *"did not know anything about HN300 falling in love with a woman associated with his group,"*<sup>330</sup> although as head of the SDS *"of course that is something I would have known about, but I didn't and I don't..."*<sup>331</sup> He says *"I'm saying I know nothing whatsoever about it, which throws up a question and I can't answer the question"*<sup>332</sup>.
- (4) He says as Chief Superintendent he was not aware of "Barry Tompkins" being known as an activist's boyfriend and he did not know that SDS management had concerns he was sleeping with another woman<sup>333</sup>.

101. **Angus McIntosh (1976-1979)** accepts knowing of the risk of sexual relationships but like Geoffrey Craft he denies:

- (1) Knowledge of Richard Clark's sexual relationships with women whilst undercover.<sup>334</sup> He accepts that he arranged for Richard Clark to be withdrawn but as for the reason for the compromise of the UCO's identity states that he only knew that Richard Clark had been confronted with his birth and death certificates.
- (2) Knowing that "Jim Pickford" was withdrawn as a result of falling in love with an activist<sup>335</sup>. He said that *"if he had known about it, [he] would certainly have recalled it"*<sup>336</sup>.

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<sup>327</sup> Craft {Day8/68:22-25}.

<sup>328</sup> Craft {MPS-0747446/50} at §117.

<sup>329</sup> Craft T1P3 {Day8/22:22-24} and McIntosh T1P3 {Day9/64:2-7}.

<sup>330</sup> Craft {MPS-0747446/46}.

<sup>331</sup> Craft T1P3 {Day8/73:12-25}.

<sup>332</sup> Craft T1P3 {Day8/74:11-18}.

<sup>333</sup> Craft T1P3 {Day8/136:3-10}

<sup>334</sup> Craft T1P3 {Day8/22:22-24} and McIntosh T1P3 {Day9/64:2-7}.

<sup>335</sup> McIntosh T1P3 {Day9/87:19}-{Day9/88:2}.

<sup>336</sup> McIntosh {MPS-0747578/47} at §134.

102. Chief Inspector Barry Moss (1980) said “*obviously there was a risk, as we know with hindsight, sir, but I suppose we didn’t see it like that at the time*”<sup>337</sup>.
103. The Cat H CPs submit that these denials do not withstand scrutiny.
104. Given that the risk of sexual relationships is obvious and inherent, it is not plausible that some UCOs and some managers in a position of responsibility, like Angus McIntosh and Michael Ferguson, were aware of it and some, like Geoffrey Craft and Barry Moss were not.
105. Geoffrey Craft’s denials of awareness are particularly implausible because they involve accepting that an Inspector who was for a whole year directly answerable to him (Angus McIntosh), and a Detective Chief Inspector who took over his role shortly after he relinquished it (Michael Ferguson) were both aware of or involved in discussions about ‘*the issue of girlfriends*’, but he was wholly unaware of them.
106. Perhaps in an effort to address this implausibility, **both** Angus McIntosh and Geoffrey Craft have claimed that they do not recall serving alongside each other for an entire year between 1976-1977<sup>338</sup>. This claim, however, is even more implausible. Their own evidence as to periods of service<sup>339</sup>, and SDS records confirm that they did overlap for a year<sup>340</sup>. In addition, as Angus McIntosh said, the compromise of Richard Clark was an event of “*great significance operationally*”, so that they both recalled attending the pub after Richard Clark indicated to them that he might be exposed, at the same time<sup>341</sup>, but incredibly they still claim they don’t recall each other. Further undermining the evidence of both men, is that Richard Clark’s compromise was a matter of serious concern to the SDS. The matter was escalated to Rollo Watts, then Commander Special Branch<sup>342</sup> who approved the withdrawal of Richard Clark as soon as possible<sup>343</sup>. It was of such significance to the SDS that Geoffrey Craft included a reference to the

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<sup>337</sup> Moss T1P3 {Day5/131:6-8}.

<sup>338</sup> McIntosh T1P3 {Day9/117:2-6}; McIntosh {MPS-0747578/8} at §23; and {MPS-0747578/23} at §66 Craft {MPS-0747446/22} at §51(vii) and {MPS-0747446/43} at §99.

<sup>339</sup> Craft {MPS-0747446/4} at §8; McIntosh {MPS-0747578/4} at §§5-6.

<sup>340</sup> Special Branch minute sheet signed by Geoffrey Craft/ HN34 refers to DI McIntosh/ HN244’s travel {MPS-0730728}

<sup>341</sup> McIntosh T1P3 {Day9/62:10-22}.

Craft T1P3 {Day8/21:18-25}.

<sup>342</sup> Rollo Watts was formerly Chief Superintendent from 1971 until February 1973 when he signed documents as Acting Commander. He held the rank of Commander Special Branch from 1976 to 1977. CTI Opening Statement T1P2 §§55-56 and {MPS-0730219} and {MPS-0738137}.

<sup>343</sup> Minute Sheet dated 24 September 1976 {MPS-0732910/1}.

compromise in the 1976 SDS Annual Report<sup>344</sup>. In these circumstances it is inherently unlikely that the two SDS managers most closely involved and responsible for this event were unaware of the widespread common understanding in the SDS that Richard Clark's sexual relationships led to the compromise.

107. The evidence of Geoffrey Craft and Angus McIntosh relating to the compromise of Richard Clark, and the awareness of his sexual relationships, is therefore incredible, and neither man was able to offer any reasonable or plausible explanation for these inconsistencies and implausibilities in oral evidence<sup>345</sup>.

108. Equally implausible is that neither man knew why "Jim Pickford" was withdrawn. In Angus McIntosh's case this involves denying a meeting with an undercover officer who recalls the remarkable events leading to "Jim Pickford"'s withdrawal in considerable detail, and in both men's case, denying knowing the reasons for a decision on withdrawal that, as the two key senior officers in 1976, they must have been responsible for. In his witness statement, Angus McIntosh said that he thought "Jim Pickford" was "*still serving when I left the SDS*"<sup>346</sup>. In oral evidence, Angus McIntosh changed his evidence and said he thought that "Jim Pickford" was withdrawn because "*his time was up*"<sup>347</sup> even though "Jim Pickford" had two years to go as he had only been in post for two years. As for Geoffrey Craft, he was unable to explain why he did not know about something which as head of the SDS he "*of course ....would have known about*"<sup>348</sup>.

109. Further, as with Richard Clark's withdrawal, "Jim Pickford's" circumstances posed a real threat to the SDS. The 1977 SDS Annual Report under the heading 'Security' Geoffrey Craft said that security of the SDS was "*of paramount importance*" for the protection of field officers.<sup>349</sup> An undercover officer threatening to expose the existence of the SDS to an activist that he had fallen in love with – as "Jim Pickford" did – would on any view be a threat. Angus McIntosh admitted in oral evidence that "Jim Pickford's" situation "*would have to be reported all the way up. He would have had to come out. I mean, it*

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<sup>344</sup> Craft T1P3 {Day8/108:11-25}; 1976 SDS Annual Report {MPS-0728980/4}.

<sup>345</sup> Craft T1P3 {Day8/74:1-10}; McIntosh T1P3 {Day9/18:5-25}.

<sup>346</sup> McIntosh {MPS-0747578/47} at §135.

<sup>347</sup> McIntosh T1P3 {Day9/88:12-14}.

<sup>348</sup> Craft T1P3 {Day8/73:19-25}.

<sup>349</sup> SDS Annual Report 1977 {MPS-0728981/7}.

– *it would be a very serious position and it was*<sup>350</sup>. There is no good explanation for neither Angus McIntosh nor Geoffrey Craft being aware of it.

110. Nor is the evidence about Richard Clark and “Jim Pickford” the only evidence Geoffrey Craft has been required to deny in order to maintain his stance of contemporaneous ignorance of the risk of sexual relationships. Vincent Harvey (1976-1979) has given evidence that he discussed with Geoffrey Craft how to respond to another activist expressing an interest in him and was advised by him not to get involved<sup>351</sup>. Geoffrey Craft denies this conversation saying he “*didn’t recall it at all*” and that he would have recalled it if it happened<sup>352</sup>. The Cat H CPs submit that the sheer number of significant events attested to by others which Craft claims not to recall itself undermines his evidence.

111. Some support for Geoffrey Craft’s professed ignorance of Richard Clark’s sexual conduct comes from the same undercover officer who reported “Jim Pickford”’s love affair to Angus McIntosh. This support, however, is based on the UCO’s expectation that Geoffrey Craft would have vehemently disapproved of the relationship and have been apoplectic if he had been directly told about it by Richard Clark<sup>353</sup>; it thus appears to relate to the period before the compromise and is speculation. The UCO’s evidence is not inconsistent either with Geoffrey Craft hearing suggestive banter, or with him discovering more details about Clark’s sexual relationships at the time Clark was withdrawn from deployment. Withdrawal from deployment was, in Craft’s view, the ultimate sanction for misconduct in the SDS<sup>354</sup>.

112. It is remarkable furthermore that despite his reputation for puritanism<sup>355</sup>, it was during Geoffrey Craft's tenure in the SDS that so many known sexual relationships took place, including the 'womanising' of Vincent Harvey, Richard Clark and “Jim Pickford”. His stint as Superintendent of S Squad meanwhile preceded further worsening of the practice of sexual relationships in the later periods of the SDS’ existence. It seems likely that whatever his personal views were, Geoffrey Craft was resigned to the reality of such

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<sup>350</sup> McIntosh T1P3 {Day9/89:16-20}.

<sup>351</sup> Harvey T1P3 {Day14/19:1-18}

<sup>352</sup> Craft T1P3 {Day8/144:6-16}.

<sup>353</sup> T1P4 {MPS-0748061/44-45}.

<sup>354</sup> Craft T1P3 {Day8/57:11-20}.

<sup>355</sup> T1P4 {MPS-0748061/38,45,51}.

relationships. After all as he put it in oral evidence ‘...is that something which one could prevent?’<sup>356</sup>. In those circumstances it seems he preferred to keep aloof, to turn a blind eye unless a scandal broke, and to rely on his reputation to maintain deniability.

113. As for Trevor Butler and Barry Moss, both men took over management of the SDS in 1979/1980, and for all the reasons set out above cannot have been ignorant of the obvious risk of sexual relationships or kept in the dark about the scandalous events of 1976 which showed that risk was not merely theoretical. Trevor Butler, furthermore, is very likely to have been aware of the Security Service’s recorded belief that “Barry Tompkins” had ‘bedded’ an activist since he was Chief Inspector of the SDS at the time, and “Barry Tompkins” recalls a conversation with him<sup>357</sup>, notwithstanding Butler’s denials<sup>358</sup>.

114. For all these reasons the Cat H CPs submit that the various managers’ denials that they knew that i) there was a real risk of sexual relationships between UCOs and members of the public, ii) that this risk was likely to have materialised in actual relationships and iii) that it had in fact done so on one or more occasions, should be rejected.

#### **E. Knowledge of risks amongst senior MPS managers, Home Office officials and Ministers**

115. In all the circumstances set out above, the Cat H CPs submit it is also likely the risk of sexual relationships with female members of the public was understood by senior police officers outside the SDS, including the MPS Commissioners. Indeed some managers (see e.g. Geoffrey Craft and Barry Moss) went on to more senior policing roles. Many senior officers from the T1 period are now deceased, and few have been called to give oral evidence. It is likely, given the prevailing attitudes to women in the MPS as a whole, extending to its Commissioners (see above and *In the Office of Constable*, Sir Robert Mark, 1978, p. 61, p95, p231-2) that to those who knew of the operations and existence of the SDS, this obvious risk of sexual relationships, inherent in the type of deployment, was regarded with equanimity and even some jocularly, as long as it assisted and did not compromise SDS’s operations<sup>359</sup>.

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<sup>356</sup> T1P3 {Day8/71:8}.

<sup>357</sup> HN106 {MPS-0745735/44} at §135.

<sup>358</sup> Butler T1P3 {Day10/82:1-23}.

<sup>359</sup> See “Graham Coates” oral evidence on managers’ tacit understanding of the intelligence benefits of having sexual relationships. HN304 T1P2 {Day12/54:1-10}.

## F. Measures taken to combat the risk of sexual relationships

116. The evidence is clear that the only measure introduced by the SDS which could conceivably be said to address the known risk of sexual relationships was the active recruitment of men who were married or in long term relationships<sup>360</sup>. This was not, however, the main purpose of this approach to recruitment; marriage was instead intended as Graham Coates, for example, explained, to endow the officer with a 'more stable character given the likely exposure to stresses and strains of the likely work involved'.<sup>361</sup> In any event, the events leading to the withdrawal of both Rick Clark and Jim Pickford demonstrated that it provided inadequate protection against this risk. In the police force as a whole adultery was generally accepted to be a risk:

*"Policemen have one of the highest divorce rates in the country. There's always a bit of spare around the corner, because of the glamour of the job"*<sup>362</sup>.

117. No other steps were taken.

118. There was no guidance or training:

- (1) Undercover officers were not advised or provided any guidance by SDS managers about how far it was acceptable to be involved in the private lives of their targets and avoiding sexual relationships whilst undercover.<sup>363</sup> At best they were advised euphemistically to be 'careful' and take 'precautions'<sup>364</sup>.
- (2) SDS managers have confirmed that they did not give officers advice about sexual relationships whilst undercover<sup>365</sup>. Barry Moss said that "*it might have been a good idea*" but he did not give advice on how to avoid sexual contact with women<sup>366</sup>.
- (3) Geoffrey Craft appeared unable even to conceptualise what such guidance would have looked like. When asked about how to prevent officers engaging

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<sup>360</sup> McIntosh T1P3 {Day9/75:12-18}.

<sup>361</sup> HN304 T1P2 {Day12/7:21-25}.

<sup>362</sup> Reiner, 1985, *Politics of the Police*, p99

<sup>363</sup> {MPS-0740354/5}; {MPS-0740760/7}; {MPS-0738576/6}; {MPS-0738584/7}; {MPS-0740328/6}; {MPS-0739316/6}; {MPS-0740414/6}; {MPS-0739804/9-11}; {MPS-0741095/4}; {MPS-0745773/7}; {MPS-0746258/5}; {MPS-0742600/4}; {MPS-0740968/5}; {MPS-0740332/3}; {MPS-0740413/4}; {MPS-0740356/4}; {UCPI0000033626/5}; {MPS-0740761/9};

<sup>364</sup> Creamer {MPS-0747215/6}; HN304 T1P2 {Day12/12:9-15}; {MPS-0742282/5}.

<sup>365</sup> {MPS-0747760/17}; {MPS0747802/26}; {MPS-0747527/43}; {MPS-0747578/56}; {MPS-0747797/44}; {MPS-0747446/49}; T1P3 {Day6/28:1-6}.

<sup>366</sup> Moss T1P3 {Day5/141:7-12}

in sexual relationships, he said “ ... *All I can say is that perhaps one – it needs to be emphasised regularly with the – before it starts and also regularly while the operation is continuing, because I don’t think there is any way of preventing it because these things happen, but it – it is a problem*”<sup>367</sup>.

- (4) Angus McIntosh denied that he did not give strict guidance on sexual contact undercover and said “ *I would have thought that if they were having a problem with this particular aspect, they would approach either myself or the DCI to discuss the problem and the way forward*”<sup>368</sup>.

119. After Richard Clark and “Jim Pickford” were withdrawn in 1976, there was no evidence of guidance or training to officers to avoid sexual relationships or intimate relationships whilst undercover, nor were any other measures taken. The Cat H CPs submit that the lack of any meaningful action once the obvious risk of sexual relationships materialised in practice strongly suggests that such relationships were tolerated as inevitable, useful and on occasion essential to the success of SDS’s operations.

120. There was no support to develop cover backgrounds and legends which alleviated the risk of sexual relationships:

- (1) In practice, undercover officers chose their cover identities alone without assistance<sup>369</sup>.
- (2) Trevor Butler said in his statement that undercover officers should not have had an issue about not being in a relationship because they could have addressed the lack of a girlfriend in their legends<sup>370</sup>. It is not clear what type of legend, other than a false romantic attachment<sup>371</sup>, could have effectively deflected suspicion over a long period of time, nor did Trevor Butler address this<sup>372</sup>. He said that he did not consider providing cover girlfriends to his officers nor did he ask them if they had come under pressure to indulge in

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<sup>367</sup> Craft T1P3 {Day8/69:1-3}; {Day8/143:22} – {Day8/144:4}.

<sup>368</sup> McIntosh T1P3 {Day9/30:9-14}

<sup>369</sup> T1P3 {Day7/40:8 – 12}; Miller T1P2 {Day14/35:19}-{Day14/36:2}. HN126 T1P2 {Day15/59:5-17}; HN200 {MPS-0740968/7}.

<sup>370</sup> {MPS-0747658/27}.

<sup>371</sup> HN80 (“Colin Clark”) said that he was in a long term long distance relationship with an airline stewardess who lived in New Zealand. He conceived of this background himself. HN80 {UCPI0000033626/5}.

<sup>372</sup> Butler T1P3 {Day10/123:1-11}.

sexual activity or whether they had engaged in sexual contact whilst undercover<sup>373</sup>.

- (3) Angus McIntosh gave evidence that there were discussions within the SDS about *“how to deflect suspicion about UCOs not being in a sexual relationship with a member of the group”*<sup>374</sup>. There is a restriction order covering the content of these discussions. Angus McIntosh described these discussions in oral evidence, however, as responsive to *“the crisis at the time”*<sup>375</sup>. He said *“individuals would come up and say, ‘I’m in a situation here. Is there any way I could produce a lady?’”*<sup>376</sup>

121. There was no effective supervision of UCOs in the field:

- (1) Supervision consisted of meetings in safe flats and pubs, and examination of overtime requests<sup>377</sup>.
- (2) Other UCOs did not feel able to report what they knew about other UCOs entering into sexual relationships, even if they personally disapproved<sup>378</sup>.
- (3) UCOs did not tell their managers if they entered into sexual relationships. In the words of one, *‘I didn’t attribute it much importance’*<sup>379</sup>.

122. There were no meaningful sanctions once sexual relationships occurred:

- (1) In relation to *“Jim Pickford”*, Angus McIntosh said that the *“matter would have been reported all the way up”* but he did not know if disciplinary action would have been taken<sup>380</sup>.
- (2) Angus McIntosh said that he would expect the Chief Inspector to have *“withdrawn”* Vincent Harvey and *“the matter to be taken up to the superintendent/ chief superintendent level”* if his relationships with women became known<sup>381</sup>.
- (3) Angus McIntosh expressed reservations as to whether disciplinary proceedings would have been initiated if he knew of Vincent Harvey and HN21’s sexual relationships whilst undercover. He said *“...all the circumstances*

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<sup>373</sup> Butler T1P3 {Day10/123:1-11}.

<sup>374</sup> McIntosh {MPS-0747578/48}.

<sup>375</sup> McIntosh T1P3 {Day6/118:11-22}.

<sup>376</sup> McIntosh T1P3 {Day6/118:11-22}.

<sup>377</sup> {MPS-0747104/7}; {MPS-0747802/10}; {MPS-0726608/4}; {MPS-0747446/8,20};

<sup>378</sup> Closed Officers GistT1P4 {MPS-0748061/46}

<sup>379</sup> HN354/ Vince Harvey; MPS-0744903/35 §169

<sup>380</sup> McIntosh T1P3 {Day6/89:21-25}.

<sup>381</sup> McIntosh T1P3 {Day6/57:14-19}.

would have to be considered and it – it could have happened. The senior management may have felt the circumstances were such that it wouldn't be a discipline"<sup>382</sup>.

- (4) Geoffrey Craft suggested that it may not be possible to discipline an SDS officer to avoid compromise of the SDS<sup>383</sup>. When asked by the Chair if Richard Clark would have been considered for disciplinary action if his sexual relationships became known, Geoffrey Craft said "...The only caveat on that, sir, is that, bearing in mind his rights, should there be a discipline board, what would he have said, what might have been published. We were operating in a top secret area and I – I can't honestly say what decision would have been made about that"<sup>384</sup>.
- (5) Trevor Butler said that an officer would have been removed from the SDS for engaging in sexual relationships but he did not know if there would be disciplinary action thereafter as it was "above [his] pay grade"<sup>385</sup>.
- (6) Barry Moss said that in his time "disciplinary action" would not "necessarily have led to a "formal police disciplinary conduct in terms of appearing before a disciplinary board. It would have certainly, I would think, have led to a redeployment of the individual and maybe a re-examination of his position in Special Branch."
- (7) Richard Clark and "Jim Pickford" were withdrawn early because they posed a risk of compromise to the security of the SDS rather than because of their sexual relationships. "Barry Tompkins" was believed by SDS Managers to have 'bedded' an activist in 1981, but was not removed from the SDS and continued in his role for a further two years.

### G. Sexism in the MPS

123. The Cat H CPs submit that entrenched misogyny and sexism in the MPS lie behind both:

- (1) The fact that UCOs entered into sexual relationships with female members of the public while undercover.
- (2) The failure of senior police officers to take any steps whatsoever to address this obvious risk.

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<sup>382</sup> McIntosh T1P3 {Day6/91:1-4}.

<sup>383</sup> Craft T1P3 {Day5/25:7-15}.

<sup>384</sup> Craft T1P3 {Day8/25:7-15}.

<sup>385</sup> Butler T1P3 {Day10:19-20}.

124. That there was widespread misogyny and sexism in the MPS at the relevant time is incontestable in the light of the PSI *Police in Action* report described above. The existence of those attitudes among officers in the SDS is apparent from the following examples of the evidence which is consistent with that report:

- (1) The prevalent sexual banter, including about relationships with female members of the public, often of a gross kind, recounted by “Graham Coates” and confirmed by other officers including Geoffrey Craft and Angus McIntosh<sup>386</sup>. The evidence of officers, such as Vincent Harvey<sup>387</sup>, who have denied hearing sexual banter should be rejected as implausible and untrue.
- (2) Vincent Harvey’s evidence that he did not tell his managers about sexual relationships with four separate women because *‘he didn’t attribute it much importance’*<sup>388</sup>.
- (3) The description of “Barry Tompkins” as having *‘bedded’* a female activist in official minutes of a meeting with the Security Services (i.e. the language of conquest referred to in the PSI report at p87).
- (4) Geoffrey Craft’s response when asked if he was concerned about the impact of sexual relationships on the deceived woman, as opposed to the officer and his family:  
*“I’m not happy about it but what is the alternative? Because accepting that rape is not involved, does all sexual activity in terms of modern moral attitudes require a legally endorsed exchange of CVs before sexual activity takes place? And so to the extent to which the man concerned as operating under false colours, is that something which one could prevent? I don’t know”*<sup>389</sup>.
- (5) Angus McIntosh’s answer when asked if officers engaging in sexual activity whilst undercover were abusing their power said *“Not at all, no. I – I would have viewed it as, if you take away the discipline side, of something which is between male and female, or of whatever sex, and things happen, and the mental track of that is down to the individual”*<sup>390</sup>.

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<sup>386</sup> HN304 T1P2 {Day12/37:20-25}; Craft T1P3 {Day8/66:9-21}; McIntosh T1P3 {Day9/52}.

<sup>387</sup> Harvey T1P2 {Day14/62:1-5}; HN126 T1P2 {Day15/86:9-25}; HN298 T1P2 {Day9/48:5-7}; ; Smith T1P3 {Day6/97:18-19}; Brice T1P3 {Day7/59:5-22}; Walker {MPS-0747527/44} at §122; Moss T1P3 {Day5/142:18}- {Day5/143:4}.

<sup>388</sup> Harvey {MPS-0744903/35} §169.

<sup>389</sup> Craft T1P3 {Day8/71:8}.

<sup>390</sup> McIntosh T1P3 {Day9/75:11-15}.

125. It is clear that these attitudes had a real impact on conduct:

- (1) Sexual relationships became increasingly common in the T1 period, so that at least a third of all officers deployed between 1974-1982 engaged in them.
- (2) Senior police officers turned a blind eye to bawdy talk about such relationships and expressed no overt disapproval of it<sup>391</sup>.
- (3) UCOs took no steps to report or prevent such conduct amongst themselves<sup>392</sup>.
- (4) No disciplinary proceedings were ever taken against those who entered into relationships to avoid exposure of the SDS<sup>393</sup>. The SDS's operations were therefore given explicit priority over the bodies and human dignity of the women involved, even though the SDS's main function was to identify the correct amount of resources to devote to policing public order<sup>394</sup>.
- (5) No meaningful steps were ever taken to prevent sexual relationships occurring in the future.

126. The Cat H CPs submit that neither they nor their fundamental rights were deemed of any importance at all. It is striking furthermore that even now, forty years later, after the MPS apology to those of the Cat H CPs who brought a civil claim against the MPS<sup>395</sup> and after the IPT judgment in *Wilson*, in both of which the MPS accepted that sexual relationships with women were abusive and amounted to inhuman and degrading treatment<sup>396</sup>, former senior police officers in the SDS are unwilling to acknowledge that fact<sup>397</sup>. Instead they regard the conduct of UCOs using their false identity to deceive female members of the public into sex as equivalent to an ordinary individual flirtatiously embellishing their CV.

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<sup>391</sup> HN304 T1P2 {Day12/52:5-9}.

<sup>392</sup> T1P4 {MPS-0748061/46}.

<sup>393</sup> Moss T1P3 {Day5/140}; McIntosh T1P3{Day9/89:21-25}; {Day9/91:1-4}; Craft T1P3 {Day8/24:16}- {Day8/25:16}; McIntosh T1P3 }; see also Bob Lambert SDS Discussion Paper {MPS-0726956}

<sup>394</sup> 1969 SDS Annual Report {MPS-0728973}; 1975 SDS Annual Report {MPS—0730099/1}; .

<sup>395</sup> Statement of public apology issued on 20 November 2015 by the Commissioner of Police of the Metropolis.

<sup>396</sup> Letter dated 30 March 2017 from Fiona Taylor, Assistant Commissioner of the MPS; IPT judgment in *Wilson* at §228-231.

<sup>397</sup> Craft T1P3 {Day8/71:8}; McIntosh T1P3 {Day9/75:11-15}.

## VI. CONCLUSIONS

127. For all these reasons, the Cat H CPs reiterate their position as set out in the Cat H P3 O/S and the accompanying Legal Framework (“**Framework**”)<sup>398</sup>. They submit that the use of undercover policing by the SDS was unjustified, unlawful, and profoundly anti-democratic. It seriously violated fundamental rights at common law and human rights law<sup>399</sup>.

128. First, it is clear from the evidence summarised above that through the activities of the SDS, the MPS, Security Service and Home Office were closely monitoring, recording and influencing the lawful exercise of fundamental democratic rights, including freedom of expression and political thought, freedom of assembly, and political association of members of the public. The public’s ability to exercise these rights without state interference is the lynchpin of Britain’s democratic system, as well as a constitutional and international human right (see *Wilson* §§322 – 333; *Handyside v UK* (1979-80) 1 E.H.R.R. 737 §49). The SDS’s monitoring amounted to interference with those rights, and thus required strong justification, especially given their importance to democracy (see Framework §38-41, §§51-53, §63, and *Wilson* §§325-6, §§332-3).

129. The evidence shows, moreover, that the SDS’s officers’ invasions of fundamental rights did not stop at key democratic rights. With the support and encouragement of senior officers, the Home Office and the Security Service, they also trespassed into areas of citizens’ private lives in which constitutionally and as a matter of human rights law ordinarily the state has no proper business. In their false identities, UCOs invaded the sanctuary of private homes, violated the intimacy of private family lives and inveigled their way into the personal and private dealings of members of the public. They did so without any, or any clear, targets, and once there they indiscriminately gathered large volumes of information to which they became privy through deception and trespass,

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<sup>398</sup> Category H T1P3 Opening Statement and Annex [https://www.ucpi.org.uk/wp-content/uploads/2022/05/20220504-T1P3-Cat\\_H\\_CPs-Opening\\_Statement.pdf](https://www.ucpi.org.uk/wp-content/uploads/2022/05/20220504-T1P3-Cat_H_CPs-Opening_Statement.pdf)

<sup>399</sup> In their Submissions on section 2 of the Inquiries Act 2005, 4 October 2022, at §21 and §§79-80 CTI state (see §79):

*“Whether undercover policing was conducted lawfully is relevant to aspects of the Inquiry’s terms of reference. The legality of tactics such as entering the homes of activists, taking and disseminating confidential information needs to be considered. The lawfulness of the SDS’s methods and operations generally is at least relevant to assessing the adequacy of justification, authorisation, operational governance, training, management and oversight of the undercover operations in Tranche 1. The lawfulness of undercover policing, as it was carried out by the SDS, is also relevant to the statutory and policy regulation of undercover policing (or, more specifically, the lack thereof) in the Tranche 1 era.”*

including private and confidential information. They then passed what they had gathered out to be recorded in police files, and shared with the Security Service.

130. These actions amounted to serious interferences, by the MPS, with several of the most fundamental rights protected by both common law and human rights law (see Framework<sup>400</sup> §§1-16 and §26-29; §§42-44; §§60-62; §56). In addition, all those who instigated, aided, counselled or directed the SDS's activities were jointly responsible (see *White v Withers LLP* [2009] EWCA 1122, §41-43 citing Clerk & Lindsell, 19<sup>th</sup> edition; *Petrie v Lamont* (1842) Car. Marsh 93 at 96). That includes the Home Office who authorised and funded the SDS' activities, knowing their nature<sup>401</sup>, and the Security Service who received and retained the private information obviously obtained by trespass and other torts and sought more. Such interferences had to be strictly justified and tightly controlled to be lawful: Framework §§1-16 and §26-29; §§42-44;<sup>402</sup> §§60-62; §56; *Ghani v Jones* [1970] 1 QB 693 at 706G-H; *Wilson* §289; *Malone v Commissioner of Police* [1979] Ch. 344, 377; *Klass v Germany* §50, §55).

131. The SDS' activity fell far short of these essential standards. The need to maintain public order at demonstrations, which the evidence shows was the purported primary purpose of the SDS' activities, could not conceivably justify the inroads into democratic values and private common law rights caused by this type of extensive undercover surveillance. In the sphere of human rights obligations that was the conclusion in *Wilson* at §282-290 endorsing the 2012 conclusion of Her Majesty's Inspectorate of the Constabulary (HMIC) in its report "*An inspection of undercover policing in England and Wales*" (2014, referenced in NPCC O/S T1/P1 §14).

132. As for the common law, there is no case which comes close to suggesting invasive powers like these could be used to police public order more effectively, still less that this could be done covertly; quite the contrary (see Framework §§1-4; *Privacy International v IPT* [2021] QB 936 at §§39-48, *Ghani v Jones* [1970] at 706G-H, *Entick v Carrington* (1965) 95 ER 807 pp.817-818). Indeed it is a striking feature of the opening submissions of the MPS, NPCC and NCA for T1 P1/2 (see MPS O/S T1/P1 at §§61-79; NPCC O/S T1/P1 at §§20-21; NCA O/S T1/P1 at §§20-21) that the examples they give of where undercover policing

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<sup>400</sup> See also CTI Submissions on section 2 of the Inquiries Act 2005

<sup>401</sup> UCOs "...couldn't stop at a door and suddenly turn around and say, 'I can't go in there', and it would have jeopardised their cover." McIntosh T1P3 {Day9/17:10-20}.

<sup>402</sup> See also CTI Submissions on section 2 of the Inquiries Act 2005

is essential to society all concern crimes, and not only crimes but serious crimes: child abuse, drug trafficking, weapons smuggling, terrorism, where those spied on are those suspected of committing these crimes. Even where crime is concerned, however, “...the common law does not permit police officers...to ransack anyone’s house, or to search for papers or articles therein...simply to see if he may have committed some crime or other” (*Ghani v Jones*, 708) nor does the common law permit untargeted indiscriminate searches: “The aversion to general warrants...is one of the basic principles on which the law of the UK is founded” (*Privacy International* at §§39-48).

133. In tacit recognition of the difficulties in justifying the SDS’s activities on the basis of upholding public order, both the MPS (T1/P1 O/S §§84-5) and the Designated Lawyers (T1/P1 O/S §7.2) rely on the fact that intelligence gathered by SDSUCOs was shared with the Security Service (MI5). While Cat H CPs agree that examination of the role of MI5 in what went so badly wrong with undercover policing in 1968-1983 is a critical aspect of this Inquiry, they do not agree that the sharing of information with MI5 could justify the police engaging in undercover operations which did not serve a clear policing purpose,<sup>403</sup> nor that it could render lawful conduct which violated fundamental rights at common law and under the ECHR. The involvement of the Security Service simply means that it is jointly responsible for the SDS’ tortious and unlawful conduct. Notably the Security Service itself was then (see Maxwell Fyfe Directive at §3)<sup>404</sup> and remains (see sections 2-3 Security Service Act 1989) subject to a strict necessity requirement in respect of its own activities and the information it collects. Further it had to justify its common law torts, and invasions of fundamental rights, in the ordinary way. The Security Service has not adduced evidence capable of justifying the inroads into common law and fundamental rights occasioned by the SDS’s actions. Those actions remain for all the reasons set out above, and in the Cat H’s P3 O/S and Framework, unlawful.

134. The wider involvement of the Home Office and the Security Service does, however, help explain why the MPS acted in a manner which senior officers must have known was unlawful. MPS Commissioners publicly declared their belief that i) they considered it necessary to break the law to achieve policing objectives, and that ii) they had the tacit

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<sup>403</sup> See Home Office *Consultation on the Special Branch* terms of reference in 1980 querying whether there was a lawful basis for police officers to investigate ‘subversion’ if the activities subject to investigation were lawful; [UCPI0000004715/4].

<sup>404</sup> [UCPI00000034262].

support of the establishment, including the judiciary, in doing so (see *McNee's Law* (p180-181); *In the Office of Constable*, 1978, p54-55, 58-59). In respect of the SDS' activities, that view will have been fostered by the funding and close encouragement of the Home Office, and the Security Service, notwithstanding the concerns about Special Branch activities being expressed by Members of Parliament and Senior Home Office Officials (see for example F4 paper documenting criticisms of Special Branches in October 1980 and Sir Brian Cubbon's reaction to the paper that there was "*nothing fundamentally wrong with the task at present set for special branches.*"<sup>405</sup> (See also letter from the Security Services to Sir Robert Armstrong about the proposed revision to the Terms of Reference for Special Branch<sup>406</sup>.)

135. The Cat H CPs consider this belief, and the role of the Home Office and Security Services in fostering it, is a matter of serious concern.

136. Secondly, however, these were not the most serious interferences with individual rights perpetrated by the MPS. When they unlawfully interfered with the public's longstanding constitutional rights, the MPS also took the misogyny which riddled and corrupted the entire organisation, and transported it directly into the private homes and private lives of women. These were women who were entitled to believe they were safe in their homes and private circles of friends and acquaintances, that, in a potentially dangerous world, they were making autonomous choices about who to invite into their lives and private spaces, who to trust. In reality the MPS was making that choice for them. Instead of choosing officers who would respect the women they encountered and instead of taking all necessary precautions to counter the obvious risk of sexual relationships, both the MPS, and the men sent into their lives, had contempt for them. Nurtured in a '*cult of masculinity*' SDS' officers, like their counterparts across the Force, were encouraged to view women as '*slags*' or '*split-arses*' and themselves as sexual '*conquerors*' '*triumphing*' over women (*Police in Action*, p87, p91-97; *Twenty three women police officers' experiences of policing IJPSCM*, 2020 vol22(1), 31-33). "*Gross*" and "*lurid*" language about sex and women was commonplace (*Police in Action*, p87 and 91, "*Graham Coates*"<sup>407</sup>). Some UCOs were notorious womanisers (see further Annex at §10 (Richard Clark) and §27 ("*Jim Pickford*")). The attitudes of senior officers were little better (*In the Office of Constable*, p. 61, p95, p231-

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<sup>405</sup> {UCPI0000004427/2}.

<sup>406</sup> {UCPI0000004720}.

<sup>407</sup> "Coates" T1P2 {Day12/52:5-14}

2). Further, to this day, many of those responsible for the SDS in T1 do not accept any wrongs were done to the women with whom UCOs had sex. They do not consider women are entitled to know who they are really having sex with, nor do they accept that it is abusive for the police to use sex with women to assist them to gather information<sup>408</sup>.

137. In these circumstances it is no surprise that neither UCOs nor senior officers inside or outside the SDS, paid any regard to the dignity or bodily autonomy of the women they spied on. No meaningful steps were taken to avert the obvious risk of sexual relationships either before it first materialised or after it became clear sexual relationships were taking place. Instead women were used casually by UCOs according to their personal preferences, and/or the perceived exigencies of their deployment, to maintain cover, gain access or obtain information. After being used they were the subject of 'bawdy talk' or gross banter amongst UCOs in the hearing of senior officers (see "Graham Coates"<sup>409</sup>), who tolerated it and turned a blind eye. The evidence of those senior officers in this Inquiry that they did not know about the risk, or that they knew about it but did not know sexual relationships had occurred, is incredible and should be rejected as untrue. The dangerous and disgraceful conduct of the SDS was to continue for forty more years.

138. The Cat H CPs do not consider it remotely plausible that the manifestly obvious risk of sexual relationships was known to and considered by only junior police officers, and their immediate superiors in the SDS. Any police officer, official or minister who knew officers were being sent undercover with false identities and cover addresses for four years, knew about that risk. The chain of knowledge about the length and nature of deployment extends to Commissioner level and into the Home Office; it also encompasses the Security Service<sup>410</sup>. Women were thought of in highly sexualised terms; any prolonged exposure to women, especially for men at work, was seen as a temptation to sex and was the subject of often ribald speculation (see *In the Office of Constable*, p. 61, p95, p231-2). Furthermore, averting the risk of romantic or sexual relationships is one of the most complex parts of undercover work, and realistically is likely to necessitate false romantic

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<sup>408</sup> Geoffrey Craft T1P3 {Day8/71:8}; Angus McIntosh T1P3 {Day6/75:11-15}.

<sup>409</sup> "Coates" T1P2 {Day12/52:5-14}

<sup>410</sup> Knowledge of SDS within MPS extended to the Commissioner who were known to visit the SDS in person. E.g. Smith {MPS-0747443/34} at §81; Craft {MPS-0747446/39} at §93. Knowledge within the Home Office of the SDS extended to Sir Robert Armstrong, Permanent Under Secretary of State and later Head of Home Civil Service {MPS\_0730742} and his successor as Permanent Secretary to the Home Office, Sir Brian Cubbon {MPS-0734164}. Security Service personnel were aware of the SDS e.g. {MPS-0730219}; {MPS-0729093/4}.

attachments. They in turn would ordinarily have to be women police officers, who were in those days few and far between. In short if meaningful steps had been taken they would have been known about at high levels of seniority (see for example the funding and acquisition of cover accommodation). Since no meaningful steps were taken, the inference must be, at least, that the risk was considered tolerable, and a blind eye was turned by all those responsible for the SDS (see *Wilson*, Order of 24 January at Annex A, §1, Framework §59).

139. For all these reasons it is clear women were severely discriminated against by the SDS's activities, and were subject to discriminatory risks (see *Wilson* at §307-8) at the hands of a police force in which sexism was endemic.

140. Finally the Cat H CPs wish to address the attitudes of the MPS to the public and to this Inquiry. As explained above, despite all the allowances made for them, including evidence in closed, protection of their real identities and the Attorney General's immunity, some police officers, including senior officers, have not told the whole truth to this Inquiry. They have continued to prioritise the '*powerful code*' of backing each other up over the right of the Inquiry, and ultimately the public, to discover the truth about what went wrong with the SDS in T1. The '*them and us*' culture of the MPS, pitting internal police interests against the public they are supposed to serve, is deeply corrosive. It is the antithesis of the Peelian principles, and in particular, the principle that the police are the public and the public are the police. The public expected and had the right to expect that the police would uphold law and order and the values of truth, integrity and honesty which underpin law and order, just as they, the public, are expected to do: *R v Lockett* [2020] EWCA Crim 565, [2020] 2 Cr. App. R. (S.) 43 §18. In the T1 era the police undermined these values and betrayed the public trust. The public also have the right to expect the MPS will tell this Inquiry the whole truth. With a few honourable exceptions (such as Graham Coates), they have not done so. That is deeply disappointing.

141. The Cat H CPs consider that the endemic misogyny in the MPS, and the culture of '*them and us*' has to be eradicated for the safety of the public. As the crimes of David Carrick and Wayne Couzens have shown, these attitudes, and the tolerance for them in the MPS, have horrific consequences for women. They can literally be a matter of life and

death. They hope and trust that the Inquiry will recommend that the long overdue process of eradication will be prioritised and urgently progressed.

**CHARLOTTE KILROY KC**  
**SHANTHI SIVAKUMARAN**  
**10 FEBRUARY 2023**

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**ANNEX TO CATEGORY H CPs**  
**CLOSING STATEMENT**  
**TRANCHE 1**  
**EVIDENCE RELATED TO**  
**UNDERCOVER OFFICERS' SEXUAL RELATIONSHIPS**

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1. There is uncontested evidence that the following officers had sexual relationships whilst undercover: Vincent Harvey/ HN354 ("Vince Miller"), Richard Clark/ HN297 ("Rick Gibson"), HN21, HN302, HN300 ("Jim Pickford"). The extent of those relationships has been considered below save for the evidence related to Vincent Harvey which is set out in the closing statement for "Madeleine" and is not repeated in this Annex.
2. The following officers have denied having sexual relationships with women while undercover despite evidence to the contrary: HN106 ("Barry Tompkins"), HN155 ("Phil Cooper") and HN126 ("Paul Gray"). Their denials and the evidence in support of those sexual relationships having taken place is considered further below.
  - I. **Richard Clark/HN297 ("Rick Gibson")**
3. Richard Clark served with the SDS as an undercover officer between 1974 to 1976. He was known to have infiltrated the Troops Out Movement (TOM)<sup>1</sup>. He also tried to infiltrate Big Flame<sup>2</sup>. He is deceased and has not provided evidence to the Inquiry.
4. There is strong evidence from both civilian witnesses and undercover officers that Richard Clark had at least four relationships with women whilst undercover as "Rick Gibson".
5. Richard Chessum who had "close relationship"<sup>3</sup> with "Rick Gibson" was aware of "Rick Gibson" having sexual relationships with at least four women<sup>4</sup>: (1) 'Mary'; (2) an activist from Goldsmiths College who was periodically involved in TOM Branch in

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<sup>1</sup> Mary {UCPI0000034181/16}; Richard Chessum {UCPI0000034182/19}.

<sup>2</sup> Richard Chessum {UCPI0000034182/45}.

<sup>3</sup> Richard Chessum {UCPI0000034182/21}; T1P2 {Day10/67:5-14}.

<sup>4</sup> Richard Chessum {UCPI0000034182/48}. That is four women within his knowledge. It is not known if there were more women he had a sexual relationship with in his cover identity.

South East London and was Mary's flatmate; (3) another activist who was in an open relationship; (4) a member of Big Flame who he had a relationship with and who he left a note explaining why he was leaving. Richard Chessum said that the first three of the relationships were "*common knowledge*" at the time and the fourth relationship he learnt of after he was shown a dossier of evidence assembled by Big Flame when they exposed him<sup>5</sup>. The dossier included a letter to a female member of the group "*explaining why he had to 'go away'*"<sup>6</sup>. He did not see who it was addressed to but was given to understand that it was a serious relationship because Richard Clark did not leave a note for any of the other women<sup>7</sup>.

6. He was told that Big Flame had investigated "Rick Gibson" following suspicions about his lack of "*politics and political nous*".<sup>8</sup> This led to them finding his birth and death certificate and that his background was not as he claimed it to be<sup>9</sup>. The members of Big Flame did not tell Richard Chessum that it was the women that Richard Clark had relationships with that suspected him<sup>10</sup>. When Richard Chessum told "Mary" and her flatmate about "Rick Gibson," her flat mate commented that they wondered if he was a police officer because he "*left in the middle of the night*" and they considered if he was going back to his family<sup>11</sup>.
7. "Mary" gave evidence about her relationship with "Rick Gibson". She said that "Rick Gibson" was a frequent visitor to her flat to see her and her flat mate and to coordinate activities for TOM<sup>12</sup>. They did not have protracted or frequent sexual encounters and he was not a boyfriend<sup>13</sup>. She did not initiate or make the first move but assumed that their sexual encounters were "*a manifestation of a mutual attraction.*" They were "*half-hearted and fizzled out*"<sup>14</sup>. If she knew he was a police officer she would not have had sexual contact with him<sup>15</sup>. Mary later learnt that her flatmate had a similar experience with "Rick Gibson"<sup>16</sup>.

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<sup>5</sup> Chessum T1P2 {Day10/106:9-19}; Richard Chessum {UCPI0000034182/48}.

<sup>6</sup> Chessum T1P2 {Day10/107:6-16}.

<sup>7</sup> Chessum said that he was not told the name of the woman but he now has "*suspicions about it*" T1P2 {Day10/107:2-24}.

<sup>8</sup> {UCPI0000034182/45}.

<sup>9</sup> Chessum T1P2 {Day10/109:18}-{Day10/110:4}.

<sup>10</sup> Chessum T1P2 {Day10/114:10-11}.

<sup>11</sup> Chessum T1P2 {Day10/114:6-25}.

<sup>12</sup> Mary {UCPI0000034306/1}; {UCPI0000034181/12} at 6.

<sup>13</sup> Mary {UCPI0000034181/12} at §6.

<sup>14</sup> Mary {UCPI0000034181/12} at §6 (iv).

<sup>15</sup> Mary {UCPI0000034181/12} at §6 (v).

<sup>16</sup> Mary {UCPI0000034306/1}.

8. She thought that *“his use of sex was a way of consolidating his history and to cement his reputation.... to get closer to us as a group of activists”*<sup>17</sup>. Her contact with “Rick Gibson” declined as he *“moved up the ‘career’ ladder”*<sup>18</sup>. Mary felt it was *“very embarrassing and upsetting”*<sup>19</sup> to discover “Rick Gibson” was an undercover officer and said *“I feel very used by him and the state, invading my privacy and my body”*<sup>20</sup>.
  
9. Richard Clark admitted to other officers in the SDS that he had sexual relationships whilst undercover confirming Richard Chessum and ‘Mary’s’ evidence. Angus McIntosh confirmed that Richard Clark was the type of person who would brag about sexual conquests (although he denied knowing of those relationships)<sup>21</sup>. “Graham Coates” said that he heard joking about Richard Clark of a *“gross nature”* which left him in no doubt that Richard Clark had a sexual relationship with a woman and the SDS managers were aware<sup>22</sup>. One undercover officer recalled that Richard Clark told a group of SDS officers at the pub that his relations with women undercover *“had led to him being compromised”*<sup>23</sup>.
  
10. It became common knowledge that Richard Clark had sexual relationships whilst undercover. An undercover officer said that it was *“generally well-known among the existing SDS officers”* that Richard Clark’s sexual relationships led to his being compromised<sup>24</sup>. Officers who joined the SDS after Richard Clark had left like “Paul Gray” who was deployed in 1977 also learnt of his relationships. “Paul Gray” said that *“he’d obviously had an affair whilst he was undercover...”* and *“the rumour around”* was that he had sexual relationships with women whilst undercover<sup>25</sup>. This may explain how Richard Clark earned his well-known reputation for *“womanising”*<sup>26</sup>. Geoffrey Craft and Angus McIntosh, the Detective Chief Inspector and Detective Inspector, in the SDS deny knowledge of Richard Clark’s sexual relationships. Their denial of knowledge is

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<sup>17</sup> Mary {UCPI0000034181/13} at §6 (vi).

<sup>18</sup> Mary {UCPI0000034181/17} at §6.6.

<sup>19</sup> Mary {UCPI0000034306/2}.

<sup>20</sup> Mary {UCPI0000034306/2}.

<sup>21</sup> McIntosh T1P3 {Day6/84:14-25}.

<sup>22</sup> T1P2 {Day12/41:19}-{Day12/41:7}; {Day12/44:5-19}.

<sup>23</sup> {UCPI0000034307/5}; Closed officers {MPS-0748061/45-46}

<sup>24</sup> Closed officers {MPS-0748061/61}

<sup>25</sup> HN126 T1P2 {Day/57:2-18}

<sup>26</sup> T1P4 {MPS-0748061/44}; Closed officers {MPS-0748061/47}; HN304 {MPS-0742282/43}; Closed officers {MPS-0748061/61}; Vince Miller {T1P2Day14/63:10-13}

not accepted by the Category H CPs and is considered in further detail in the Category H Closing Statement at §§97-114.

## II. HN21

11. HN21 was deployed in the late 1970s/ early 1980s<sup>27</sup>. He has provided the Inquiry with a written statement and given evidence in closed hearings.
12. HN21 admitted to sexual relationships first with two women in his witness statement<sup>28</sup> and then changed his evidence saying that he in fact had a relationship with one woman over a period of several months<sup>29</sup>. HN21 admitted to having sexual relationships with her on two separate occasions and sexual contact short of sex on further occasions<sup>30</sup>. On the first occasion, he stayed overnight and “*it just happened*”<sup>31</sup>. He said they were not “*pleased*” about it because they were friends. The second occasion was six/seven months later after she had broken up with somebody and he helped her move<sup>32</sup>. He used contraception on both occasions<sup>33</sup>. On other occasions they would “*kiss and cuddle*” and then they decided it could happen but it “*wasn't right*”<sup>34</sup>.
13. He said that she was “*a-political*” but he met her through evening classes that he attended<sup>35</sup>. The woman was one of a small group of friends HN21 was a part of<sup>36</sup>. Participating in this group was “*quite important to [his] cover.*” He confirmed that they were a small group of friends and it was enjoyable “*but for my cover it was really good*”<sup>37</sup>.
14. He did not know if she would have consented to a relationship if she knew his true identity<sup>38</sup>. He failed to consider that he was deceiving her saying that “*..the guilty conscious thing*” arose for him because he was married but it was irrelevant that he was a police officer. He said if it was one of his “*comrades*” he would have felt like he was

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<sup>27</sup> {UCPI00000034307/1}.

<sup>28</sup> {UCPI00000034307/1}.

<sup>29</sup> HN21 T1P4 {MPS-0748062/8}

<sup>30</sup> HN21 T1P4 {MPS-0748062/8}

<sup>31</sup> T1P4 {MPS-0748062/8-9}.

<sup>32</sup> T1P4 {MPS-0748062/8-9}.

<sup>33</sup> T1P4 {MPS-0748062/11}.

<sup>34</sup> T1P4 {MPS-0748062/10}.

<sup>35</sup> HN21 T1P4 {MPS-0748062/8}

<sup>36</sup> HN21 T1P4 {MPS-0748062/8}

<sup>37</sup> HN21 T1P4 {MPS-0748062/8}

<sup>38</sup> HN21 T1P2 {MPS-0748062/12}.

exploiting them but he didn't consider it was worse that he was a police officer on duty at the time.

15. The Inquiry has not been able to trace the woman he referred to and she has therefore not been provided with the opportunity to give evidence to the Inquiry<sup>39</sup>. Her political views and the extent of their relationship cannot be confirmed. The Category H CPs observe that HN21's account that it was irrelevant that he was a police officer is inconsistent with his evidence that associating with the group was good for his cover. HN21 was always on duty in his cover identity. He would not have associated with the woman and the group to this extent whilst on duty if it was not related to his deployment. HN21 has admitted to a sexual and intimate relationship with a woman over a six-month period which could only have supported his cover identity.

### III. HN302

16. HN302 was deployed in the late 1970s/ early 1980s. HN302 provided the Inquiry with a witness statement of which the gist has been disclosed only<sup>40</sup>. He also gave evidence in closed hearings<sup>41</sup>.
17. HN302 admitted a sexual encounter with a woman he met undercover at meetings. He said that he was single in real life and his cover identity when he met her<sup>42</sup>. He met her at meetings and they went for a drink after one of the meetings<sup>43</sup>. He also met her at social events and at demonstrations and while socialising at the pub<sup>44</sup>. It was early in his deployment during the "*initial period*" but may have been six months in<sup>45</sup>. It was a "joint episode" and he invited her back to his bedsit<sup>46</sup>. They used contraception<sup>47</sup>. He did not see her again afterwards<sup>48</sup>.
18. HN302 failed to appreciate the significance of deceiving a woman into a relationship even with the benefit of hindsight. He said that he suspected she would not have had sex with him if she knew he was a serving police officer but he did not think he was

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<sup>39</sup> Correspondence from the Inquiry to Birnberg Peirce Partners dated 6 March 2022.

<sup>40</sup> Gist of officers evidence {UCPI0000034307/4}.

<sup>41</sup> HN302 T1P4

<sup>42</sup> Gist of officers evidence {UCPI0000034307/4}.

<sup>43</sup> Gist of officers evidence {UCPI0000034307/4}.

<sup>44</sup> HN302 T1P4 {MPS-0748065/3}.

<sup>45</sup> HN302 T1P4 {MPS-0748065/2}.

<sup>46</sup> HN302 T1P4 {MPS-0748065/3}.

<sup>47</sup> HN302 T1P4 {MPS-0748065/3}.

<sup>48</sup> HN302 T1P4 {MPS-0748065/5-6}.

deceiving her or betraying her trust.<sup>49</sup> He claimed it “*made no difference*” and it was similar to any of the friendships he developed.<sup>50</sup>

19. HN302 recognised that having some romantic relationship with a woman provided a tactical advantage saying: “*having a drink with this woman did bolster my cover identity, but the fact that we ended up having sex did not*”<sup>51</sup>. He assumed it bolstered his cover identity because he anticipated that “*she could verify the liaison*”<sup>52</sup>.
20. He said “*it was not something that my management told me to do and I did not speak to my managers about it afterwards.*”<sup>53</sup> He was not sure that the managers would have “*passed comment*” if they had known but he might have been given advice that he made a mistake.<sup>54</sup> He found it a difficult area to discuss because it was “*dealt with recently by the Association of Chief Police Officers and the Police Council.*”<sup>55</sup>
21. As with Vincent Harvey, HN302 did not consider sexual relationships whilst undercover as significant nor did he attribute them much importance. He said he did not tell his managers as he “*didn’t think it was necessary.*”<sup>56</sup> His attitude to sexual relationships exemplifies the Category H CPs submissions on the wider SDS attitudes towards sexual relationships at §§87-96; 112-114; 123-124.

#### IV. HN300 (“Jim Pickford”)

22. “Jim Pickford” was deployed from 1974 until 1976 serving only a 2 year deployment over the same period of time as Richard Clark. He infiltrated anarchist and far-left groups during his deployment. “Jim Pickford” is deceased and has not given evidence to the Inquiry.
23. “Jim Pickford” had one known relationship with an activist. An undercover officer said that “Jim Pickford” “*tearfully told me that he had fallen in love with a lady who was*

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<sup>49</sup> HN302 T1P4 {MPS-0748065/6}.

<sup>50</sup> HN302 T1P4 {MPS-0748065/6}.

<sup>51</sup> Gist of officers evidence {UCPI0000034307/4}.

<sup>52</sup> HN302 T1P4 {MPS-0748065/3}.

<sup>53</sup> Gist of officers evidence {UCPI0000034307/4}.

<sup>54</sup> HN302 T1P4 {MPS-0748065/7}.

<sup>55</sup> HN302 T1P4 {MPS-0748065/7}.

<sup>56</sup> HN302 T1P4 {MPS-0748065/7}.

*associated with his group....he wanted to tell her everything...which he realised could seriously impact the entire SDS operation”<sup>57</sup>.*

24. The undercover officer also said that “Jim Pickford” insisted that he had not had a sexual relationship with this woman but that in relation to his feeling for her, it was a “mutual thing”<sup>58</sup>. The officer, with “Jim Pickford’s” agreement spoke to Angus McIntosh, then Detective Inspector of the SDS, about the situation<sup>59</sup>. According to the officer, Angus McIntosh then went to meet “Jim Pickford” who was withdrawn from the field in December 1976<sup>60</sup>.
25. Evidence from “Jim Pickford’s” second wife (who he was married to during his deployment) suggests that a sexual relationship began during the currency of his deployment. She said that he began a relationship with a woman while he was working undercover that she became aware of<sup>61</sup>. The relationship led to a divorce a year after his deployment ended<sup>62</sup>. He later married the woman he met while undercover and they had a child together<sup>63</sup>. The woman he met while undercover used to call him “Jimmy”<sup>64</sup>.
26. The Chief Inspector and Detective Inspector of the SDS at the time, Geoffrey Craft, and Angus McIntosh both deny knowledge of “Jim Pickford” confessing that he was in love with an activist<sup>65</sup>. Their denials of knowledge are not accepted for reasons set out in more detail in the Category H Closing statement at §§97-114.
27. “Jim Pickford” was allowed to remain in Special Branch as a serving officer only retiring after 29 years’ service<sup>66</sup>. “Jim Pickford” was known to be an alcoholic and was confined to the office sometime after his service with the SDS<sup>67</sup>. One of “Jim Pickford”’s colleagues expressed surprise that “Jim Pickford” was able to marry the activist because he believed that the relationship would have come out through his

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<sup>57</sup> Closed officers gist {UCPI0000034307/4} ; T1P4 {MPS-0748061/49}

<sup>58</sup> T1P4 {MPS-0748061/53}

<sup>59</sup> T1P4 {MPS-0748061/46}

<sup>60</sup> T1P4 {MPS-0748061/48}.

<sup>61</sup> HN300’s ex-wife {MPS-0747525/4}

<sup>62</sup> HN300’s ex-wife {MPS-0747525/4}

<sup>63</sup> HN300’s ex-wife {MPS-0747525/4}

<sup>64</sup> HN300’s ex-wife {MPS-0747525/4}

<sup>65</sup> Craft {MPS-0747446/46-47} §§107-108. And McIntosh {MPS-0747578/47}.

<sup>66</sup> {MPS-0726711/2}.

<sup>67</sup> T1P4 {MPS-0748061/43}

vetting and communicating with others in Special Branch<sup>68</sup>. Angus McIntosh also referred to the difficulty of keeping information secret in Special Branch. When asked his views about “Jim Pickford” marrying an activist he said “*I find it amazing and I find it amazing that rumour control kept that secret*”<sup>69</sup>. It does not appear to have been a secret as an undercover officer said that they met his wife at social events and knew he was having a divorce<sup>70</sup>. “Jim Pickford” also had a reputation as a “*womaniser*”<sup>71</sup> and for “*falling in love all over the place*”<sup>72</sup> and being a “*sexual predator*”<sup>73</sup>. This reputation was likely to have been fuelled by the relationship he developed undercover and maintained post deployment.

## V. HN106 (“Barry Tompkins”)

28. “Barry Tompkins” was deployed from 1979 to 1983. He infiltrated the Spartacist League, a Trotskyist group which was active in East London<sup>74</sup>. He provided the Inquiry with a written statement but did not give oral evidence for health reasons<sup>75</sup>. He is now listed as deceased on the Inquiry website.

29. “Barry Tompkins” was likely involved with two women during his deployment. The first woman was named in a record of a meeting between the Security Services and SDS as the SDS managers believed that “Barry Tompkins” may have ‘*bedded*’ her<sup>76</sup>. The second woman was named by “Barry Tompkins”. There is no evidence from either woman and so the only evidence before the Inquiry is from “Barry Tompkins” and Trevor Butler and Barry Moss his managers at the time.

30. “Barry Tompkins” denied having any sexual relationships with activists whilst undercover<sup>77</sup>. “Barry Tompkins” explained that the reference to him having “*bedded*” an activist in the meeting minute may be a misunderstanding and a reference to another activist (and not the one named in the meeting minutes). He said that this second activist became known as “Barry’s girlfriend” amongst other activists and he

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<sup>68</sup> {MPS-0748061/51}.

<sup>69</sup> McIntosh T1P3 {Day6/90:16-24}.

<sup>70</sup> T1P4 {MPS-0748061/43}

<sup>71</sup> Smith T1P3 {Day3/ 114:6-25}; Moss T1P3 {Day2/138:1-3}.

<sup>72</sup> T1P4 {MPS-0748061/44}

<sup>73</sup> T1P4 {MPS-0748061/43}

<sup>74</sup> HN106 (“Barry Tompkins”) {MPS-0745735} at §59

<sup>75</sup> CTI Opening Statement to Tranche 1 Phase 2 dated 21 April 2021 at §42.

<sup>76</sup> {UCPI0000027446};

<sup>77</sup> HN106 (“Barry Tompkins”) {MPS-0745735/43}

frequently stayed at her house – although he slept in a separate room from her<sup>78</sup>. He said that Trevor Butler approached him about a reference in an intercepted telephone call to “Barry’s girlfriend’s place”<sup>79</sup> and asked him “*you’re not going to get us into trouble are you?*.” “Barry Tompkins” responded to Trevor Butler “*no its nothing like that*” and nothing further was said about it<sup>80</sup>. He believed that Trevor Butler was referring to the second activist but no names were mentioned. He had a “*vague memory*” of the first woman named in the Security Services file (saying she had a “*party trick that she would lactate on demand*”) but denied having a relationship with her<sup>81</sup>.

31. He did not correct activists who referred to the second woman as “Barry’s girlfriend” because “*it was actually helpful for my cover for people to think I had a girlfriend as I otherwise faced questions about why a young man seemingly had no interest in women*”<sup>82</sup>. The Cat H CPs suggest it is unlikely this intimate and close relationship remained entirely platonic as HN106 suggests over a sustained period of time. That he became known as her boyfriend suggests a common understanding among his target group that a sexual relationship did develop.

32. It is not known how Dave Short, the SDS Manager present at the meeting, came to believe that “Barry Tompkins” had a sexual relationship with the first activist. However, it is unlikely that they would have shared this information with the Security Services without some basis for it. Trevor Butler did not assist the Inquiry with the reference in the minutes saying he did not pass this information to Dave Short who attended the meeting<sup>83</sup>. He also denied the conversation with “Barry Tompkins” suggesting that “*HN106 has mixed me up with one of the other managers*”<sup>84</sup>. The other manager in the SDS up until 1981 was Barry Moss (as Detective Chief Inspector in 1980 and later Superintendent of S Squad in 1981). He said that he “*knew nothing*” about the alleged relationship<sup>85</sup>.

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<sup>78</sup> HN106 (“Barry Tompkins”) {MPS-0745735/42-43}

<sup>79</sup> HN106 (“Barry Tompkins”) {MPS-0745735/42-43}

<sup>80</sup> HN106 (“Barry Tompkins”) {MPS-0745735/42-43}

<sup>81</sup> HN106 (“Barry Tompkins”) {MPS-0745735/42-43}

<sup>82</sup> HN106 ({MPS-0745735/43} at §134.

<sup>83</sup> Butler T1P3 {Day10/85:16-23}.

<sup>84</sup> Butler T1P3 {Day10/86:7-17}.

<sup>85</sup> Moss {MPS-0747797/39}.

33. HN68 served as an Inspector from 1980 – 1982 and Dave Short replaced Trevor Butler as Chief Inspector from 1982. Both are now deceased and cannot provide further information on the reference in the minutes.

#### **VI. HN155 (“Phil Cooper”) deployed in 1979 to 1983**

34. “Phil Cooper” was deployed from 1979 to 1983<sup>86</sup>. He infiltrated the Socialist Workers Party and Anti-Nuclear Campaign and Right to Work Campaign<sup>87</sup>. He provided the Inquiry with a witness statement but did not give oral evidence due to the state of his health<sup>88</sup>.

35. “Phil Cooper” told risk assessors that he lived a “*full alternative life*” whilst undercover for the SDS<sup>89</sup>. He continued to admit to a number of “liaisons” and said that not all the “*dalliances*” resulted in a sexual relationship<sup>90</sup>. “Phil Cooper” later denied making admissions to the risk assessor in his witness statement claiming they “*misinterpreted [his] comments*”<sup>91</sup>. He said that he was “*quite clear*” that he did not have a sexual relationship and only accepted that it “*could have been an option*”<sup>92</sup>. He said the risk assessment was conducted at “*somespeed*” and that he was asked to fact check the draft risk assessment “*at short notice and quite urgently*”<sup>93</sup>.

36. Both risk assessors were called to give evidence and explained their recollection of the interview and “Phil Cooper’s” account.<sup>94</sup> The weight of their evidence points in favour of their having taken an accurate record of the interview. (1) The interview was at “Phil Cooper”’s home address and lasted 3-4 hours which indicates that it was not rushed<sup>95</sup>. (2) David Reid asked open questions and did not suggest that it was possible and not unsurprising that “Phil Cooper” engaged in sexual activity<sup>96</sup>. (3) He said that “Phil Cooper” did not deny engaging in sexual activity as others did or it would have been recorded<sup>97</sup>. This is supported by David Reid’s contemporaneous, handwritten notes

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<sup>86</sup> {MPS-0747546/34} §12

<sup>87</sup> {MPS-0747546/11}

<sup>88</sup> Ruling of 23 February 2021

<sup>89</sup> {MPS-0746346}

<sup>90</sup> {MPS-0746710}

<sup>91</sup> HN155 {MPS-0747546/33} at §115.

<sup>92</sup> HN155 {MPS-0747546/34} at §115.

<sup>93</sup> HN155 {MPS-0747546/33}.

<sup>94</sup> T1P2 {Day16/185}

<sup>95</sup> HN155 {MPS-0746378/3}.

<sup>96</sup> David Reid {MPS-0746378/6} at §13; T1P2 {Day16:24}-{Day16/259:3}

<sup>97</sup> David Reid {MPS-0746378/7} at §§14; Brian Lockie {MPS-0747533/5}. Reid T1P2 {Day16/203:3-10}.

taken during the interview which records words “Phil Cooper” used such as “*dalliances*” and “*groupies*”<sup>98</sup> but there is no denial of a sexual relationship. (4) Both David Reid and Brian Lockie had the impression that “Phil Cooper” was talking about his own experiences and not the possibility of a sexual relationship<sup>99</sup>. (5) Brian Lockie said that the risk assessment was an “*accurate record*” of the account given by “Phil Cooper”<sup>100</sup>. Further he observed that “*it was not our job to prove anything;... I had no bias one way or the other*”<sup>101</sup>.

37. “Phil Cooper” had an opportunity to correct the risk assessment during the fact checking and only identified one sentence which was corrected<sup>102</sup>. This reflected that the encounters were social but was not a denial that they were sexual<sup>103</sup>. He did not use the opportunity to correct any other aspects of the risk assessment<sup>104</sup>.

38. A gist of issues raised by Tranche 1 SDS officers in respect of risk assessments conducted by David Reid and Brian Lockie do not affect the reliability of “Phil Cooper’s” risk assessment as the gist shows that (1) despite the issues raised about the unreliability of some typewritten materials in several cases the risk assessors **handwritten notes** accorded with the position that the undercover officers had asserted was correct<sup>105</sup>. In “Phil Cooper’s” risk assessment, the handwritten notes do refer to his alluding to sexual relationships with women. (2) details were disputed such as dates (e.g. HN347), prominence of undercover officers roles in a demonstration (e.g. HN126) and addresses. “Phil Cooper’s” risk assessment however was about a substantive issue which it is improbable that **both** risk assessors could have misunderstood.

39. “Phil Cooper” engaging in sexual relationships in his cover identity is consistent with the other known evidence of his behaviour whilst undercover. He was known by other activists for “*having a good time.*”<sup>106</sup> and during his deployment concerns were raised

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<sup>98</sup> David Reid {MPS-0746378/4-6} §§5-8, 12; T1P2 {Day16/218:11-15}; Reid T1P2 {Day16/223:7-25}; Locke T1P2 {Day16/256:18-25}.

<sup>99</sup> David Reid {MPS-0746378/7} at §15; Reid T1P2 {Day16/228:22-25}; Lockie T1P2 {Day16/260:12-16}

<sup>100</sup> HN155 {MPS-0747533/4}; Locke T1P2{Day16/254:18-22}.

<sup>101</sup> Brian Lockie {MPS-0747533/5}

<sup>102</sup> Reid T1P2 {Day16/238:2-6}.

<sup>103</sup> Reid T1P2 {Day16/237:21-25}.

<sup>104</sup> David Reid {MPS-0746378/8}.

<sup>105</sup> e.g. HN80 at §23; HN347 at §19, HN340 at §14; HN126 at §10 {UCPI0000034397/3}.

<sup>106</sup> Poynter {UCPI0000034801/10}.

about his “*misdemeanours*” by otherwise lax managers<sup>107</sup>. “Graham Coates” said he had a reputation for making significant expense claims and overtime claims and although he wouldn’t be “*surprised*” to hear that “Phil Cooper” had sexual relationships whilst undercover<sup>108</sup>. He was the sort to have “*small to no qualms*” with accepting an offer of a sexual relationship whilst undercover<sup>109</sup>. A paper written by Bob Lambert in 1994 also raised doubts about “Phil Cooper’s” credibility and reliability when his self-interests were at stake<sup>110</sup>. The totality of the evidence suggests that “Phil Cooper” did have “*dalliances*” and sexual relationships whilst undercover and is now seeking to resile from those admissions.

## VII. HN126 (“Paul Gray”)

40. “Paul Gray” was deployed from 1977 to 1982. He infiltrated the Anti-Nazi League and the Socialist Workers Party. He provided two witness statements to the Inquiry and was called to give evidence. After his evidence was made public, the Inquiry received a witness statement from Neil Hardie who knew “Paul Gray” in his cover identity.

41. Neil Hardie suggests that “Paul Gray” had a relationship with an activist, Ros Gardner. Neil Hardie, Ros Gardner and “Paul Gray” were all members of the Anti-Nazi League (ANL) in 1978 and attended meetings together at Ros Gardner’s flat<sup>111</sup>. Neil Hardie knew Ros Gardner well “*although she was more of a colleague*”<sup>112</sup>. He saw “HN126 and Ros Gardner together at the fundraising parties and they were about once a month”<sup>113</sup>. Neil Hardie said that he believed they had a relationship because he saw “Paul Gray” and Ros Gardner “*sit together on a sofa and she would look ‘doe-eyed’ and adoringly at him.*”<sup>114</sup> This was “out of character” for Ros Gardner<sup>115</sup>. On one occasion, Neil Hardie observed “Paul Gray” stay behind at Ros Gardner’s flat at the end of a party<sup>116</sup>. HN126 appeared to be a “*calming influence*” on Ros Gardner<sup>117</sup>. Most people

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<sup>107</sup> Managers at the time recorded their concerns about his deployment noting that “*there were serious doubts about the performance of HN155*” and referred to “*misdemeanours*” including that he was divorced and not paying maintenance and he left his van outside his home address {UCPI0000027446}.

<sup>108</sup> Coates T1P@ {Day12/48:2-19}.

<sup>109</sup> Coates {Day12/49:4-18}.

<sup>110</sup> {MPS-0726956/51}

<sup>111</sup> {UCPI00000011411}; Hardie {{UCPI0000035163/4}.

<sup>112</sup> Hardie {UCPI0000035163/5} at §36.

<sup>113</sup> Hardie {UCPI0000035163/5} at §37-38.

<sup>114</sup> Hardie {UCPI0000035163/4} at §31.

<sup>115</sup> Hardie {UCPI0000035163/4} at §31.

<sup>116</sup> Hardie {UCPI0000035163/4} at §31.

<sup>117</sup> Hardie {UCPI0000035163/4} at §33.

*“assumed that they were an item...”*<sup>118</sup> and *“most of the inner circle of the ANL would have known”*<sup>119</sup>. He did not recall HN126 having a *“close relationship with any other group member”*<sup>120</sup>.

42. Ros Gardner passed away in 2003 and is unable to confirm the account. There is documentary evidence which confirms that Neil Hardie, “Paul Gray” and Ros Gardner attended ANL meetings together.<sup>121</sup> These meetings took place within the first year of “Paul Gray’s” deployment when he was still establishing himself within the ANL.
43. “Paul Gray” strongly denies the relationship but accepted that he attended meetings with Neil Hardie and Ros Gardner from August 1978<sup>122</sup>. He reviewed SDS reports from his deployment and claimed it was not possible that he had a relationship with Ros Gardner because in December 1978, Ros Gardner was reported to be living with [privacy] at her home address<sup>123</sup>. Then in May 1979, Ros Gardner was reported to have ended her relationship with [privacy] and had a new boyfriend, Bob Cox, who had moved in with her<sup>124</sup>. Ros Gardner had three children and a grandson in 1982<sup>125</sup>.
44. “Paul Gray” said *“there was no time for any shenanigans with Ms Gardner should the occasion or desire ever have arisen, which it did not”*<sup>126</sup>. He said this was because he was in the process of separating from his first wife during his deployment and he moved into a flat with a serving police officer. The dates in which “Paul Gray” separated from his wife are redacted and so it is not known if this took place between August 1978 to May 1979.
45. There are several observations to be made in relation to HN126’s evidence: (1) “Paul Gray”’s first wife sent a letter about his affair with another officer on 19 May 1980.<sup>127</sup> If “Paul Gray” break up of his marriage took place at this time, then this would be

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<sup>118</sup> Hardie {UCPI0000035163/5} at §39.

<sup>119</sup> Hardie {UCPI0000035163/5} at §41.

<sup>120</sup> Hardie {UCPI0000035163/5} at §42.

<sup>121</sup> {UCPI0000011380}; {UCPI0000011412}; {UCPI0000012960}; {UCPI0000013002}; {UCPI0000013006}; {UCPI0000013066}.

<sup>122</sup> {UCPI0000011380}; {UCPI0000011412}; {UCPI0000012960}; {UCPI0000013002}; {UCPI0000013006}; {UCPI0000013066}.

<sup>123</sup> The report referred to by HN126 has not been disclosed. {UCPI0000013030}. HN126 {MPS-0748266/14}.

<sup>124</sup> {UCPI0000021298}.

<sup>125</sup> {UCPI0000018134}.

<sup>126</sup> Hardie {MPS-0748266/8} at §9.

<sup>127</sup> {MPS-0726912/6}.

nearly a year after the relationship with Ros Gardner had ended. (2) If “Paul Gray” was inclined to have an affair with another member of the police force whilst he was married, there was no reason he would not have had another affair with Ros Gardner, either before or at the same time as his affair. (3) The reports cited by “Paul Gray” between August 1978 and November 1978 do not refer to Ros Gardner being in a relationship. The first mention of a relationship is in December 1978 when the report of that month mentions that [privacy] is living with her. She may have gone from a relationship with “Paul Gray” on to a relationship with [privacy] in quick succession. This appears to be the case in May 1979 according to the SDS Report of that month which refers to her ending the relationship to begin one with Bob Cox. (4) The evidence that “Paul Gray” relies upon are his own SDS reports. They should be treated with caution as “Paul Gray” may have tried to obfuscate his relationship with Ros Gardner in his reports rather than disclose the true nature of it. Not least because he was married at the time.

46. When there is a sexual relationship, evidence from third parties like Neil Hardie, is unlikely to go any higher than how the couple demonstrates their relationship in public. He has given a clear and detailed account of why he believed that there was a relationship between Ros Gardner and “Paul Gray” including observing “Paul Gray” remaining at Ros Gardner’s flat as the last person after everyone else had left after a party. The evidence that “Paul Gray” relies upon does not disprove Neil Hardie’s recollection of their relationship; there is no evidence that Ros Gardner had a relationship with another person between August to December 1978.
47. A final observation is that Neil Hardie observed Ros Gardner with “Paul Gray” early on in “Paul Gray’s deployment. A relationship with a key activist early on in his deployment, may have helped “Paul Gray” infiltrate the group and establish his cover identity.

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ANNEX TO CAT H CPS OPENING STATEMENT T1/P3  
LEGAL FRAMEWORK

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**A. POLICE POWERS AND THE COMMON LAW**

Common law rights

1. The common law has for centuries zealously protected the sanctity of people's homes and the freedom and security of their persons and possessions. That protection primarily takes effect through the law of trespass, which is actionable *per se*. Thus:

(1) “[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law” (*Entick v Carrington* (1765) 95 ER 807 at 817-8).

(2) “The fundamental principle, plain and incontestable, is that every person's body is inviolate” (*Collins v Wilcock* [1984] 1 WLR 1172 at 1177-8; any interference with it, ‘however slight’, constitutes a trespass ‘in the absence of lawful excuse’ (*F v West Berkshire HA* [1990] 2 AC 1 at 73 per Lord Goff).

(3) “The right to personal liberty and to freedom from arbitrary detention is deeply embedded in the common law. It is a fundamental constitutional principle traceable to clause 39 of Magna Carta (1215) which provides that “no freeman shall be seized or imprisoned ... except by the lawful judgment of his equals or by the law of the land...At common law any deprivation of liberty is thus *prima facie* unlawful, but it may be justified according to law” (*Detention Action v SSHD* [2014] EWCA Civ 1634 §11 per Lord Justice Beatson).

- (4) *“The act of handling a man’s goods without his permission is prima facie tortious”* and must be justified in law (*IRC v Rossminster Ltd* [1980] AC 952 at 1011 per Lord Diplock).
2. Trespasses to the person, to land, and to property must therefore be justified, either by common law or statute (see *Entick v Carrington*; *IRC v Rossminster*, at 1008).
3. The high value which the common law places on the rights to personal security, liberty and property (see *GG v SSHD* [2010] QB 585 at §11, quoting Blackstone’s Commentaries on the Laws of England, 23rd ed (1854), vol 1, p 129), and the corresponding requirements for lawful justification, have resulted in muscular limits being placed on the exercise of police (or other state) powers which interfere with these fundamental rights. As the courts have explained:
- (1) *“It is a bedrock of our liberties that a citizen’s freedom of person and of movement is inviolable except where the law unequivocally gives the state power to restrict it...Nobody is required in this country to satisfy a police officer that he or she is not committing an offence. The power to detain and search arises only where conditions prescribed by law...can be shown to exist”* (*Hepburn v Chief Constable of Thames Valley Police* [2002] EWCA Civ 1841 at §§14-15).
- (2) *“It is....axiomatic that the common law rights of personal security and personal liberty prevent any official search of an individual’s clothing or person without explicit statutory authority”* (*GG* §12).
- (3) *“It is an old and cherished tradition of our country that everyone should be free to go about their business in the streets of the land, confident that they will not be stopped and searched by the police unless reasonably suspected of having committed a criminal offence. So jealously has this tradition been guarded that it has almost become a constitutional principle...”* (*R(Gillan) v Commissioner* [2006] 2 AC 307 §1 per Lord Bingham).

(4) *“The common law does not permit police officers, or anyone else, to ransack anyone's house, or to search for papers or articles therein, or to search his person, simply to see if he may have committed some crime or other. If police officers should so do, they would be guilty of a trespass” (Ghani v Jones [1970] 1 Q.B. 693, 708).*

(5) *“The aversion to general warrants” “which requires the exercise of judgment or discretion by the official executing the warrant as to which individuals or which property should be targeted” “is one of the basic principles on which the law of the UK is founded (Privacy International v Investigatory Powers Tribunal [2021] QB 936 at §§39-48).*

4. These common law limits have shaped for centuries the development of police powers, i.e. powers of arrest, entry to property, search and seizure. A police officer who fails to comply with these limits will not only be committing torts but will also be acting unlawfully in the exercise of police powers, as the House of Lords made plain in *Morris v Beardmore* [1981] AC 446. There the police officer was trespassing on the property of an individual in order to demand a breath sample from him under the Road Traffic Act 1972. Lord Diplock stated that he found it *“quite impossible to suppose that Parliament intended that a person whose common law right to keep his home free from unauthorised intruders had been violated in this way, should be bound under penal sanctions to comply with a demand which only the violation of that common law right had enabled the constable to make to him”* (p. 456A-B). Lord Edmund-Davies regarded it as *“unthinkable that a policeman may properly be regarded as acting in the execution of his duty when he is acting unlawfully, and this regardless of whether his contravention is of the criminal law or simply of the civil law”* (p. 458G-H). The police could not be seen to *“flout the law”* and yet *“be regarded as lawfully exercising powers granted to them”* (p. 462A-B). Lord Scarman cited *Entick*, as well as Art. 8 ECHR, and held that the right to privacy in the home *“has for centuries been recognised by the common law”*, and that were Parliament to remove or qualify that right, it would do so expressly (p. 465B).

#### Powers of arrest, entry, search and seizure

5. Between 1968-1983, the period covered by Tranche 1, powers of arrest for criminal offences whether pursuant to warrants, or without, could normally only be exercised in relation to criminal offences which reached a certain threshold of

seriousness, and where there was at least a reasonable suspicion that the individual had either committed or was about to commit such an offence (see in relation to arrest without a warrant s.3 Criminal Law Act 1967).

6. The common law power to arrest to prevent actual or apprehended breaches of the peace (i.e. violence or threatened violence – see *Laporte v Commissioner* [2007] 2 AC 105 §27) meanwhile was confined to three situations (see *Laporte* §29): “any breach of the peace occurring in his presence, or any breach of the peace which (having occurred) is likely to be renewed, or any breach of the peace which is about to occur.” In the latter situation the breach of the peace had to be “imminent” (*Laporte* §30).
7. As for entry, search and seizure, “[t]he purposes for which entry [into private property could] be effected include[d] the arrest of offenders, search for and seizure of illegally possessed property, discovery of evidence, and the prevention of breach of the peace”.<sup>1</sup> These powers appeared at statute and common law, both with or without warrants, but there was no general power to enter or remain on premises simply for the purposes of making enquiries (*Great Central Railway v Bates* [1921] 3 KB 578 at 581-2 per Atkin LJ).
8. The common law powers to enter without a warrant were described by the Royal Commission on Criminal Procedure as follows:<sup>2</sup>

*The common law powers to enter, without consent or a warrant, seem to us essential to deal with the situations for which they exist: [...], to deal with or prevent a breach of the peace, to save life or limb or prevent serious damage to property, and in fresh pursuit of a person who has escaped after a lawful arrest.*
9. Police officers also had a common law power to seize (but not search for – they must “come across” the property in question) the “fruits, evidence, or instruments” of serious (or “grave”<sup>3</sup>) crime from anyone “implicated” in the crime of who unreasonably refuses to hand them over:<sup>4</sup> *Ghani* 708-709; *Reynolds v Commissioner* [1985] QB 881, 895, 898, 904. *Ghani* accordingly required reasonable grounds for believing:<sup>5</sup>

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<sup>1</sup> *Report of the Royal Commission on Criminal Procedure*, Cmnd 8092 §3.34.

<sup>2</sup> *Report of the Royal Commission on Criminal Procedure*, Cmnd 8092 §3.38.

<sup>3</sup> Feldman, *Civil Liberties and Human Rights in England and Wales* (1993) p425.

<sup>4</sup> Clayton & Tomlinson, *The Law of Human Rights* (2nd ed., 2009) §12.132.

<sup>5</sup> Feldman, *Civil Liberties and Human Rights in England and Wales* (1993) p426.

- (1) That a serious crime had been committed;
  - (2) That *each* (Reynolds 890, 897) item seized was the fruit of the crime, the instrument by which it was committed, or material evidence;
  - (3) That the person in possession had committed or was implicated in the crime, or (perhaps – it is doubted by commentators<sup>6</sup>) their refusal to surrender the item is unreasonable.
10. Where entry, search and seizure could be achieved by warrant, the target of the warrant had to be identified in advance and clearly specified. The common law’s aversion to general warrants is long established: *Privacy International v Investigatory Powers Tribunal* [2021] QB 936 §§39-48. The aversion is “one of the basic principles on which the law of the UK is founded”. It cannot be overridden even by statute except with clear words (§48). It protects property and privacy, including the “secret nature” of private papers (*Privacy International* at §46, referring to *Entick v Carrington*). No warrant can be lawful “which requires the exercise of judgment or discretion by the official executing the warrant as to which individuals or which property should be targeted” (§45). Were such a power to exist it would be “totally subversive of the liberty of the subject” (*Wilkes v Wood* (1763) 19 State Tr 1153, Lord Camden CJCP).

Common law defences to trespass

11. General defences to trespass might also be available to a police officer, such as consent or licence, self-defence or necessity.
12. The threshold for the defence of necessity was high, requiring a relatively high degree of both potential harm and immediacy: “whether in all the circumstances at the time when [the defendant] acted it would appear to a reasonable man to be necessary to act to avoid a real and imminent danger”.<sup>7</sup>
13. Equally, “every person has the right also to protect himself by using reasonable force to repel an attack or to prevent an imminent attack”: *Ashley v Chief Constable of Sussex* [2008] UKHL 25, [2008] 1 AC 962 §18. This principle extends to the protection of others: *R v Duffy* [1966] 2 WLR 229. There is “a general liberty even as between

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<sup>6</sup> Feldman, *Civil Liberties and Human Rights in England and Wales* (1993) p426.

<sup>7</sup> Clerk and Lindsell on Torts (13th ed., 1969) §111; (23rd ed., 2020) §3-148.

*strangers to prevent a felony...in circumstances of necessity*". The force permissible is limited to what is reasonable in the circumstances. As it was put in *Gilchrist v Chief Constable of Greater Manchester* [2019] EWHC 1233 (QB) §37:

*Intentional use of force must be justified in law, that is, the use of any force must be justified, the nature of the force used must be justified and the extent of force used must be justified.*

14. As for consent, while it is a general defence to trespasses to the person that the claimant consented to the alleged tort,<sup>8</sup> consent obtained by force affords no defence.<sup>9</sup> Nor does consent induced by fraud (see *Bowater v Rowley Regis Corporation* (1944) K.B. 476, 479; *Chatterton v Gerson* [1981] QB 432, 442) at least where the fraud goes to the identity of the person or the nature of the act done; see *Clerk & Lindsell on Torts* (23<sup>rd</sup> ed., 2020) at §14.96-97, charting the state of flux in the law on this issue. The law in relation to consent to sexual assault where that consent has been obtained by deception has been the topic of frequent discussion and revision in the criminal context, where interpretation of criminal statutes and criminal policy considerations have played a significant part in the courts' complex reasoning (see *R (Monica) v DPP* [2018] EWHC 3508 [2019] QB 1019 §52 and §§83-86).

15. Trespass to land may be justified by an express or implied licence given by the occupier, but:

(1) A licensee who exceeds his licence is a trespasser;<sup>10</sup> as is a person acting with lawful authority who exceeds that authority.<sup>11</sup> In particular, where a licensee is admitted for a particular purpose (be their licence express or implied), it will be a trespass to exceed their licence by going beyond that purpose.<sup>12</sup> "*So far as he sets foot on so much of the premises as lie outside the invitation or uses them for purposes which are alien to the invitation he is not an invitee but a trespasser, and his rights must be determined accordingly*": *Hillen v ICI* [1936] AC 65, 69.

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<sup>8</sup> *Winfield on Tort* (8th ed., 1967) p740; *Salmond on the Law of Torts* (15th ed., 1969) p664; *Clerk and Lindsell on Torts* (23<sup>rd</sup> ed., 2020) §14-93.

<sup>9</sup> *Clerk and Lindsell on Torts* (13th ed., 1969) §678; (23<sup>rd</sup> ed., 2020) §14-98.

<sup>10</sup> *Clerk and Lindsell on Torts* (13th ed., 1969) §1345; (23<sup>rd</sup> ed., 2020) §18-49.

<sup>11</sup> *Clayton & Tomlinson, The Law of Human Rights* (2nd ed., 2009) §12.120.

<sup>12</sup> *Harvey v Plymouth City Council* [2010] EWCA Civ 860, §27.

(2) The licence could be negated where “consent was obtained by a trick” *R v Jones* [1976] WLR 672, 674H (see also *Archbold Criminal Pleading Evidence and Practice* (2022) §21-117: “There is abundant authority for the proposition that a person who has the right of entry on the land of another for a specific purpose commits a trespass if he enters for any other purpose: [...] A fortiori, it would seem that where a consent to entry is obtained by fraud, the entry will be trespassory...”).

16. It is “generally assumed” that the same approach applies to trespass to goods as to land.<sup>13</sup>

### Surveillance powers

17. In the Tranche 1 period, neither the police nor the Security Service had any statutory powers to conduct surveillance or undercover operations. The common law rights and limits on police powers set out above thus applied in full to these operations.

18. These limits were more or less reflected in the approach taken to planting listening devices or intercepting communications, albeit that the lack of statutory underpinning and clarity on the applicable law led to them being declared unlawful by the European Court on Human Rights (“ECtHR”) for failure to meet the ‘in accordance with the law’ provisions of Art. 8 ECHR (see below).

19. Thus, prior to 1997, there was no statutory regulation of the placing of listening devices in private properties by the police (in *R v Khan* [1997] AC 558, counsel for the Crown conceded that there had been a civil trespass when a bug was placed on the outside of a person’s house). Authorisation for the placing of listening devices could be granted by Chief Constables (or in certain circumstances Assistant Chief Constables) pursuant to Home Office guidelines first issued in 1977 and updated in 1984 which<sup>14</sup> provided (see *Khan v UK* (2001) EHRR 45 §§16-17 and *PG v UK* (2008) 46 EHRR 51):

4. In each case, the authorising officer should satisfy himself that the following criteria are met:

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<sup>13</sup> Clayton & Tomlinson, *The Law of Human Rights* (2nd ed., 2009) §18.13.

<sup>14</sup> “The Guidelines on the Use of Equipment in Police Surveillance Operations” 19 Dec 1984, Dep NS 1579.

- (a) *the investigation concerns serious crime;*
- (b) *normal methods of investigation must have been tried and failed, or must from the nature of things, be unlikely to succeed if tried;*
- (c) *there must be good reason to think that use of the equipment would be likely to lead to an arrest and a conviction, or where appropriate, to the prevention of acts of terrorism;*
- (d) *use of equipment must be operationally feasible.*

5. *In judging how far the seriousness of the crime under investigation justifies the use of a particular surveillance technique, authorising officers should satisfy themselves that the degree of intrusion into the privacy of those affected is commensurate with the seriousness of the offence.*

18. The regime was not, however “*in accordance with the law*” for the purposes of Art. 8 ECHR (see *Khan v UK* at §§27-28):

*At the time of the events in the present case, there existed no statutory system to regulate the use of covert listening devices, although the Police Act 1997 now provides such a statutory frame- work. The Home Office Guidelines at the relevant time were neither legally binding nor were they directly publicly accessible.....There was... no domestic law regulating the use of covert listening devices at the relevant time.*

20. As for interception of communications by the police, this was also unregulated by statute.<sup>15</sup> Nonetheless, the police conducted surveillance, pursuant to warrants issued by the Home Secretary. This power was without statutory foundation, and its origins “*obscure*”, but was acknowledged and exercised from time to time: *Malone v UK* (1985) 7 EHRR 14 §24, §28.
21. The practice was that the Home Secretary would issue such warrants only for the purposes of national security or the detection of serious crime, and in the latter case, only where the following conditions were satisfied:<sup>16</sup>

- (a) *the offence must be really serious;*
- (b) *normal methods of investigation must have been tried and failed or must, from the nature of things, be unlikely to succeed;*
- (c) *there must be good reason to think that an interception would be likely to lead to an arrest and a conviction.*

<sup>15</sup> Clayton & Tomlinson, *The Law of Human Rights* (2nd ed., 2009) §12.151.

<sup>16</sup> *Malone v UK* §42; *The Interception of Communications in Great Britain* (April 1980), Cmnd 7873 §3. Slightly different sets of requirements were suggested by police counsel in *Malone*.

22. “*Serious crime*” was defined as an offence for which a sentence of three years custody or more could reasonably be expected.<sup>17</sup> The absence of a clear statutory regime with relevant safeguards led to findings against the UK by the ECtHR on the ground that interferences with Art. 8 rights were not “*in accordance with the law*”, in *Malone v UK* (§80).

*Policing by consent and other torts applicable to the police*

23. Nine principles (known as the Peelian principles) were set out in the “*General Instructions*” that were issued to every new police officer from 1829.<sup>18</sup> They remain the foundation for the important tradition of “*policing by consent*”. They include the following:

- (1) (Principle 2) To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect.
- (2) (Principle 3) To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.
- (3) (Principle 5) To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, **the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence** (emphasis added).

24. The police’s status as “*members of the public...paid to give full time attention to duties which are incumbent on every citizen*”, is one of the reasons why police powers so closely track the law of tort which applies to all those citizens, and it is also a reason why police officers cannot “*flout the law*” when exercising police powers (see *Morris v Beardmore* at 462A-B).

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<sup>17</sup> *The Interception of Communications in Great Britain (April 1980)*, Cmnd 7873 §4.

<sup>18</sup> <https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent>

25. Aside from the law of trespass, other torts are relevant to the conduct of undercover operations.

26. The courts have long recognised, “the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it”: *Seager v Copydex Ltd* [1967] 1 WLR 923, 931; *Malone v Commissioner* [1979] Ch 344, 377. The cause of action for breach of confidence was set out by Megarry J in *Coco v AN Clark (Engineers) Ltd* [1968] F.S.R. 415, 419 (paragraphing added):

*In my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed.*

*First, the information itself, in the words of Lord Greene, M.R. in the Saltman case ... must ‘have the necessary quality of confidence about it’.*

*Secondly, that information must have been imparted in circumstances importing an obligation of confidence.*

*Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it.”*

27. There is a defence of public interest; in the case of the police, the uses to which confidential information may be put are likely to be limited to the prevention and detection of crime, the investigation of offences and the apprehension of suspects (see *Hellewell v Chief Constable* [1995] 1 WLR 804 at 810-811, referring to *Malone v Commissioner*).

28. The elements of the common law action for deceit were set out in *Bradford Third Equitable Benefit Building Society v Borders* [1941] 2 All E.R. 205, 211 (paragraphing added):

*First, there must be a representation of fact made by words, or, it may be, by conduct. [...]*

*Secondly, the representation must be made with a knowledge that it is false. It must be wilfully false, or at least made in the absence of any genuine belief that it is true: Derry v Peek and Nocton v Ashburton (Lord).*

*Thirdly, it must be made with the intention that it should be acted upon by the plaintiff, [...], in the manner which resulted in damage to him: Peek v Gurney and Smith v Chadwick, at p 201. [...]*

*Fourthly, it must be proved that the plaintiff has acted upon the false statement and has sustained damage by so doing: Clarke v Dickson.*

29. A representation may be implied from conduct, if the defendant conducts themselves in a particular way with the object of fraudulently inducing another

to believe certain things and act upon that belief.<sup>19</sup> There is, in theory, a public policy defence to deceit, where the victim of the deceit is themselves a wrongdoer, and their wrongdoing is so clearly connected to the defendant's deceit that they should not be permitted to claim damages.<sup>20</sup>

30. A claim against a public officer may lie for misfeasance in public office. *Winfield & Jolowicz on Tort* observes that the tort was a “creature of two Commonwealth decisions in 1959”. In *Three Rivers DC v Bank of England* [2001] UKHL 16; [2003] 2 AC 1, 247 §42, the elements of the tort were stated to be (paragraphing and emphasis added):

*First, there must be an unlawful act or omission done or made in the exercise of power by the public officer.*

*Second, as the essence of the tort is an abuse of power, the act or omission must have been done or made with the required mental element.*

*Third, for the same reason, the act or omission must have been done or made in bad faith.*

*Fourth, as to standing, the claimants must demonstrate that they have a sufficient interest to sue the defendant.*

*Fifth, as causation is an essential element of the cause of action, the act or omission must have caused the claimants' loss.*

31. As to the “required mental element” (p. 191, paragraphing and emphasis added):

*The case law reveals two different forms of liability for misfeasance in public office.*

*First there is the case of targeted malice by a public officer, i e conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive.*

*The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful.*

### Surveillance by the Security Service

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<sup>19</sup> *Clerk and Lindsell on Torts* (13th ed., 1969) §1621; (23<sup>rd</sup> ed., 2020) §17-05.

<sup>20</sup> *Clerk & Lindsell on Torts* (23<sup>rd</sup> ed., 2020) §17.54.

32. The actions of the Security Service were also intended to be strictly circumscribed, more so than those of the police. The Directive given to the Security Service by Sir David Maxwell Fyfe in 1952 included the following:<sup>21</sup>

*You will take special care to see that the work of the Security Service is strictly limited to what is necessary for the purposes of this task. ....*

*No enquiry is to be carried out on behalf of any Government Department unless you are satisfied that an important public interest bearing on the Defence of the Realm, as defined in paragraph 2, is at stake.*

33. Sir David Maxwell Fyfe was one of the principal drafters of the European Convention on Human Rights (ECHR) (see further below), which entered into force the following year in 1953 (see Schabas, *The European Convention on Human Rights: A Commentary* (OUP 2015) p8). The strict necessity test imposed on the Security Service, reflecting both the common law and the qualified rights in the ECHR, was continued in the Security Service Act 1989 which provided at section 2(2):

*The Director-General shall be responsible for the efficiency of the Service and it shall be his duty to ensure –*

*(a) that there are arrangements for securing that no information is obtained by the Service except so far as necessary for the proper discharge of its functions or disclosed by it except so far as necessary for that purpose or for the purpose of preventing or detecting serious crime; and*

*(b) that the Service does not take any action to further the interests of any political party.*

34. By section 3, warrants (including those authorising entry onto or interference with property), could only, except in urgent cases, be issued under the hand of the Secretary of State and only if:

*the Secretary of State –*

*(a) thinks it necessary for the action to be taken in order to obtain information which –*

*(i) is likely to be of substantial value in assisting the Service to discharge any of its functions; and*

*(ii) cannot reasonably be obtained by other means;*

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<sup>21</sup> UCPI0000034262/1.

## B. HUMAN RIGHTS

35. At all material times covered by Tranche 1, the UK had international and (when incorporated) domestic human rights obligations under the European Convention on Human Rights. The UK ratified the ECHR in 1951 and, after its creation in 1960, signed up to the right of individual petition to the ECtHR in 1966.
36. Although not incorporated into domestic law at the relevant time, the UK was responsible in international law for the actions of police officers under the ECHR.
37. It is clear that the actions of the SDS engaged a wide range of fundamental rights under the ECHR. The text of those rights is reproduced at the end of this Annex.

### *Freedom of expression: Article 10 ECHR*

38. The right to freedom of expression is integral to democracy and is protected both by common law and the European Convention on Human Rights:
  - (1) *"In a democracy it is the primary right: without it an effective rule of law is not possible."*
  - (2) *It is 'valued for its own sake. But it is well recognised that it is also instrumentally important....freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate"* (*R v SSHD ex parte Simms* [2000] 2 AC 115 at 125G-126H).
39. Art. 10(1) ECHR expressly protects the freedom to hold opinions and to receive and impart information and ideas without interference. That freedom from interference includes being able to do so without attracting the attention of the police and without being monitored and placed under surveillance (see *Kate Wilson v Commissioner of Police for the Metropolis and National Police Chiefs Council*, [2021] UKIPTrib IPT\_11\_167 at §§332-3).
40. To be lawful any interference with the right of freedom of expression by the state must meet a pressing social need, and be no more restrictive or intrusive than required to meet that need. In principle, Art. 10 is subject to the same test of legality and necessity as Art. 8: *Handyside v UK* (1979-80) 1 EHRR 737 §§43-47. However, the special importance of free expression in a democracy must always

be borne in mind when assessing whether limitations on that right are justified (§49):

*Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued.*

41. In this regard there is no difference in principle between English law and Art. 10 (see *Attorney- General v. Guardian Newspapers Ltd. (No. 2)* [1990] 1 AC 109, 283- 284 per Lord Goff and *Derbyshire County Council v. Times Newspapers Ltd.* [1993] AC 534, 550-551 per Lord Keith). In *R (Prolife Alliance) v BBC* [2003] UKHL 23, [2004] 1 AC 185 §6, the House of Lords held:

*Freedom of political speech is a freedom of the very highest importance in any country which lays claim to being a democracy. Restrictions on this freedom need to be examined rigorously by all concerned, not least the courts. The courts, as independent and impartial bodies, are charged with a vital supervisory role.*

### ***The right to respect for the home, family and private life: Article 8 ECHR***

42. Art. 8(1) ECHR protects people's families and private lives, homes and correspondence from interference by the state, save where those interferences are in accordance with the law, justified by a pressing social need and no more than strictly necessary to achieve that need.
43. The rigorous standards set in relation to ordinary state interference with Art. 8 ECHR rights are enhanced where the powers exercised are covert. Powers of surveillance are a "menace" (*Klass v Germany* (1979-80) 2 EHRR 214 §41) to all citizens, "characterising...the police state" (§42) and pose a "danger ...of undermining or even destroying democracy on the ground of defending it" (§49). Consequently states do not enjoy "an unlimited discretion to subject persons within their jurisdiction to secret surveillance" and "may not, in the name of the struggle against espionage and

*terrorism, adopt whatever measures they deem appropriate” (§49). Further “whatever system of surveillance is adopted, there must exist adequate and effective guarantees against abuse” (§50).*

44. The UK’s then system (in 1978) of granting police warrants for telephone tapping of those suspected of serious crime did not meet the necessary standard of law (*Malone v United Kingdom*). That was because it did “not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. To that extent, the minimum degree of legal protection to which citizens are entitled under the rule of law in a democratic society is lacking” (*Malone* §79). The system relating to the placing of listening devices inside the home (see *Khan v UK*, above) also failed to meet the “in accordance with the law” provisions of Art. 8 ECHR.

***The right to freedom from inhuman and degrading treatment: Article 3***

45. Art. 3 provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. There is “no provision for exceptions and [...] there can be no derogation therefrom even in the event of a public emergency threatening the life of the nation”: *Ireland v UK* (1979-80) 2 EHRR 25 §163. Treatment may be degrading, and thus absolutely prohibited by Art. 3, even if it does not amount to inhuman treatment or torture (*Tyrer v UK* (1979-80) 2 EHRR 1 §29); and particularly where there is an institutional element to the treatment (see also *East African Asians v UK* (1981) 3 EHRR 76 §196).

***Freedom from discrimination: Article 14 ECHR***

46. Art. 14 provides that the enjoyment of the rights and freedoms in the Convention shall be enjoyed without discrimination. It has no “independent existence” – it is dependent on the case falling within the ambit of another right or freedom: *Belgian Linguistic Case* (1979-80) 1 EHRR 252, 283-284. Any difference in treatment in the exercise of a right laid down in the Convention must be justified as a proportionate means of achieving a legitimate aim, just as interferences with (e.g.) Arts. 8 and 10 must be justified.

47. One of the grounds on which the ECHR prohibits discrimination in the exercise of rights, unless it can be justified, is **political affiliation**. The ECtHR has compared difference in treatment on ground of political affiliation to difference in treatment on grounds of race. In *Virabyan v Armenia* (Application no. 40094/05) §§199-200:

199. *Discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see Willis v. United Kingdom, no. 36042/97, § 48, ECHR 2002-IV). The Court has examined previously a number of cases in which the applicants alleged under Article 14 in conjunction with Articles 2 or 3 of the Convention that death or ill-treatment had been inflicted as a result of discrimination, namely racial hatred. It held that racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment [...]*

200. *The Court considers that the foregoing applies also in cases where the treatment contrary to Article 3 of the Convention is alleged to have been inflicted for political motives. It reiterates that pluralism, tolerance and broadmindedness are hallmarks of a "democratic society" (see Lindon, Otchakovsky-Laurens and July v. France [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV). Political pluralism, which implies a peaceful co-existence of a diversity of political opinions and movements, is of particular importance for the survival of a democratic society based on the rule of law, and acts of violence committed by agents of the State which are intended to suppress, eliminate or discourage political dissent or to punish those who hold or voice a dissenting political opinion pose a special threat to the ideals and values of such society.*

48. The non-discrimination obligations under Art. 14 apply even in the investigation of serious, politically motivated crime, as between different political groups suspected of involvement in such activities. In *Ireland v UK* §§225 – 232, the Court analysed "*why... Loyalist terrorism was not fought with the same weapons as Republican terrorism*".
49. As for discrimination of grounds of **sex or gender**, this is particularly offensive to the Convention. In *Markin v Russia* (2013) 56 EHRR 8 §127, the Court held "*the advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention*".
50. Discrimination can occur not only when people with protected characteristics are directly targeted by state action (direct discrimination), but also when a measure

or state of affairs has a disproportionately discriminatory effect on them (indirect discrimination): *DH v Czech Republic* (2008) 47 EHRR 3 §175.

***The right to protest; freedom of assembly and association: Article 11***

51. Art. 11 protects the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
52. As with Art. 10, a wide range of state actions can have the effect of interfering with Art. 11 rights. In *Lashmankin v Russia* (2019) 68 EHRR 1 §§404-405, the ECtHR held:

*The Court reiterates that interference with the right to freedom of assembly does not need to amount to an outright ban, legal or de facto, but can consist in various other measures taken by the authorities. The term “restrictions” in Article 11 § 2 must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards [...] For instance, a prior ban can have a chilling effect on those who may intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities. A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference as well. So too do measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants, and penalties imposed for having taken part in a rally (see *Kasparov and Others*, cited above, § 84, with further references).*

405. *The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11...The Court stresses in this connection that the organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. [...] Accordingly, in cases where the time and place of the assembly are crucial to the participants, an order to change the time or the place may constitute an interference with their freedom of assembly, as does a prohibition on speeches, slogans or banners...*

53. Like Art. 10, Art. 11 is a fundamental right in a democratic society. Art. 11(2) does not require that a restriction on the right be indispensable, but nor is it enough that it be useful, reasonable or desirable: see *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55, [2007] 2 AC 105. In *DPP v Ziegler* [2021] UKSC 23, [2022] AC 408 the Supreme Court set out relevant factors to consider in determining the proportionality of a restriction on Art. 11 rights and held that “there should be a certain degree of tolerance to disruption to ordinary life,

including disruption of traffic, caused by the exercise of the right to freedom of expression or freedom of peaceful assembly" (§68).

### C. WILSON v COMMISSIONER

54. The Investigatory Powers Tribunal ("IPT") has considered the application of all these ECHR rights in the context of undercover policing in *Wilson v Commissioner of Police of the Metropolis* [2021] UKIPTrib IPT\_11\_167\_H. *Wilson* concerned an undercover policing operation conducted by the National Public Order Intelligence Unit ("NPOIU") between 2003 and 2010, in which the claimant was the subject of surveillance by several UCOs and was also deceived into a long term sexual and romantic relationship with the undercover police officer Mark Kennedy ("MK"). Undercover activities by the NPOIU in this period are due to be assessed by the Inquiry in Tranche 4, but, given the similarity of the operations and conduct of the police throughout the period examined by the Inquiry, the IPT's conclusions are also relevant to the actions of the SDS in earlier Tranches.
55. In *Wilson's* claim, two of the key State participants in the Inquiry, the Commissioner of the Metropolitan Police ("CMP") and the National Police Chiefs Council ("NPCC") made a number of significant concessions (summarised at §14, §270, and set out in detail in Annex 2A-2B to the Judgment). In relation to the sexual relationship they conceded that:
- (1) The decision of MK to deceive the claimant into a long-term intimate and sexual relationship amounted to inhuman and degrading treatment contrary to Art. 3 ECHR. MK invaded the claimant's bodily integrity, deeply degraded and humiliated her, and caused her mental suffering. MK grossly interfered with the claimant's sexual autonomy and debased, degraded and humiliated her. He showed a profound lack of respect for the claimant's bodily integrity and human dignity.
  - (2) This breach was aggravated by the fact that the principal cover officer knew of the close relationship between MK and the claimant, but did not make enquiries as to whether it was sexual in nature, for which reason the relationship is likely to have persisted.

- (3) The sexual relationship with the claimant constituted a gross violation of her right to respect for her private and family life under **Art. 8 ECHR**.
- (4) The sexual relationship as a means of obtaining intelligence also constituted an unlawful interference with the claimant's right to freedom of expression under **Art. 10 ECHR**.
- (5) Insofar as the sexual relationship was used to obtain intelligence, it was **out of all proportion** to the aim of the prevention and detection of crime or of preventing disorder or any other legitimate objective.
- (6) They had a **positive obligation under Arts. 3 and 8 ECHR** to take reasonable measures to obviate the risk that MK would engage in a sexual relationship whilst deployed undercover, and were in breach of those obligations insofar as MK's principal cover officer failed in his duty to supervise MK. MK was not removed from his undercover role despite the fact that his principal cover officer ought to have been aware that he was conducting a sexual relationship with the claimant.

56. In relation to the interference with **Art. 8** caused by the surveillance more broadly the CMP and the NPCC accepted that:

- (1) The intelligence gathering nature of the deployment created a risk of significant interference with the claimant's right to respect for private life, because the UCOs needed to establish relationships with people in the groups and there was a risk they would gather information which exceeded information which was relevant to the deployment.
- (2) An informed assessment of the risk of intrusion into Art. 8 rights required an assessment of the risk of intrusion into privacy of subjects and third parties. It was necessary to take steps to avoid that intrusion.
- (3) It was necessary to be aware of the information obtained, the other UCOs deployed and the overall intelligence picture to assess the level of interference and other alternative intelligence opportunities.
- (4) The breach was exacerbated by a number of factors, including the cumulative effect of the number of UCOs present in the claimant's life, the nature of the groups surveilled (which included individuals whose

intentions were to pursue their objectives by legitimate means and without engaging in criminal activity), and the nature and extent of the information recorded, which included sensitive and personal information about the claimant and her family and which should not have been obtained or recorded.

57. The CMP and NPCC nonetheless disputed other significant aspects of the claim including the extent of knowledge and awareness of MK's managers, deficiencies in training, guidance and wider supervision, and the discriminatory impact of these failings. They also maintained that the deployment, while disproportionate, was necessary in a democratic society and met a pressing social need (*Wilson* §271), arguing that *"the intelligence...provided allowed the police to provide a proactive and measured response to prevent crime and public disorder and to ensure the safety of the public and those engaged in legitimate peaceful protest"*. They denied breaches of Arts. 10 and 11 ECHR, save for the breach of Art. 10 ECHR caused by the sexual relationship.

58. The IPT found against the CMP and the NPCC on all these points.

59. In relation to knowledge and awareness the IPT concluded (see Order of 24 January 2022 ("**Order**") at Annex A, §1):

- (1) MK's sexual relationship with the claimant was conducted with the knowledge of his principal *"cover officer"*;
- (2) MK's deployment manager, who had the rank of Detective Chief Inspector, knew or turned a blind eye to the sexual relationship;
- (3) Other senior officers of the rank of Detective Chief Inspector or above who had operational and managerial responsibility within the National Public Order Intelligence Unit ("**NPOIU**") for MK's deployment either knew of the relationship, chose not to know of its existence, or were incompetent and negligent in not following up on the clear and obvious signs that MK had formed a close personal relationship with the claimant which might be sexual in nature;
- (4) There was no evidence to support a finding that UCOs having sexual relationships was a deliberate tactic of the NPOIU. The true position is closer to being one of *"don't ask, don't tell"*.

60. On the CPM and NPCC's positive obligations under Arts. 3 and 8 ECHR the IPT concluded (§§2-3):

- (1) They failed to put in place sufficient systems, safeguards or protections to contain the risk that UCOs placed long-term in protest movements would enter into intimate sexual relationships with those directly or indirectly subject to surveillance;
- (2) The training of UCOs in relation to sexual relationships was grossly inadequate;
- (3) They failed to think about, plan, or take any steps to mitigate the obvious risk of MK entering into sexual relationships while deployed;
- (4) There was a widespread failure of supervision of MK in his undercover role, both by his principal cover officer and more senior officers.

61. On the necessity of the operations it concluded (§3, Annex A) that the deployment of MK (apart from the sexual relationship) and the presence in the claimant's life of other UCOs did not meet a pressing social need and was not necessary in a democratic society and not proportionate based on either the need for intelligence on the protest movement or on the claimant's own activities.

62. Importantly, in so doing the IPT endorsed the conclusions of the HMIC report "*An inspection of undercover policing in England and Wales*" (2014, referenced in NPCC O/S T1/P1 §14) to the effect that while the deployment of UCOs to gather intelligence on serious criminality might justify some intrusion into people's lives, it would be unlikely that the test of proportionality and necessity would be satisfied in relation to policing protests generally (see *Wilson* §§282-284). The IPT accepted that significant intelligence was provided which may have led to the police being able to provide a measured response to prevent crime and public disorder, but highlighted that there was an important distinction between intelligence gathering for domestic extremism, and for public order issues, which was not reflected in the NPOIU's documentation (§286). In *Wilson*, the CMP and the NPCC could not show a pressing social need: the claimant had no criminal convictions and there was no evidence that serious criminality was common amongst those subject to surveillance (§287). A fair reading of the authorisations in her case was that the principal justification for the surveillance was public disorder rather than serious criminality, and the claimant was named as a

subject because of the usefulness of her connections within the movement (§288). The IPT stated (§289):

*...the Respondents have failed to show that the intrusion into the Claimant's Art 8 rights, quite apart from the admitted breach arising from MK's sexual relationship, was necessary to meet a pressing social need. It is clear from Piechkowicz at para 212 that the burden is on the State to demonstrate that need. The evidence of a pressing social need is, in our view, thin and fails to distinguish between domestic extremism potentially involving serious criminality and public order issues. The safeguards to ensure that the surveillance was, and continued to be, focused on a pressing social need were without doubt inadequate. There was no rigorous assessment of continuing necessity; wholly inadequate (or ineffective) oversight; and in practice the operation and its intrusion into the Claimant's life continued for years without proper scrutiny or oversight. We agree with SOCA that the authorisations were over-broad. Further, there were wholly inadequate attempts to balance the highly intrusive nature of the surveillance, and the very obvious potential for, and reality of, collateral intrusion into the lives of those around the Claimant.*

63. As for Arts. 10 and 11, the IPT found that the actions of the UCOs in gathering, recording, storing and transmitting information about Wilson's political activities; and separately the occasions when MK had influenced some of her decisions and activities, had interfered with the claimant's Art. 10 and 11 ECHR rights (§§325-6 and §§332-3, *Wilson, Order, Annex A, §§6-7*), and could not be justified, for the same reasons as the Art. 8 ECHR interferences could not be justified (§336).

64. Finally in relation to discrimination, the IPT found (see *Wilson* §§307-8) that the claimant's right under **Art. 14 ECHR** to freedom from discrimination in the enjoyment of her rights under Arts. 3 and 8 ECHR had been violated because (see *Order, Annex A, §5*):

- (1) The CMP and NPCC's failure to establish a system which protected against the risk that UCOs would enter into sexual relationships with women had an incontrovertible disproportionately adverse impact on women by reason of (a) the numbers of women affected and (b) the greater adverse impact on women's lives through either risk of pregnancy or interference with their child-bearing years;
- (2) They had advanced no justification for the difference of treatment and had shown very little concern about the impact on women of introducing UCOs into their lives on a long-term basis.

65. Neither the CMP nor the NPCC appealed any of the findings in this judgment.

## **Text of the Relevant Convention Rights**

### **(1) Article 3**

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

### **(2) Article 8**

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

### **(3) Article 10**

*1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

### **(4) Article 11**

*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

*2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

### **(5) Article 14**

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*